THE FEDERAL SYSTEM

OF THE

ARGENTINE REPUBLIC

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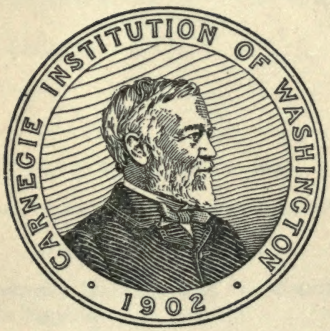

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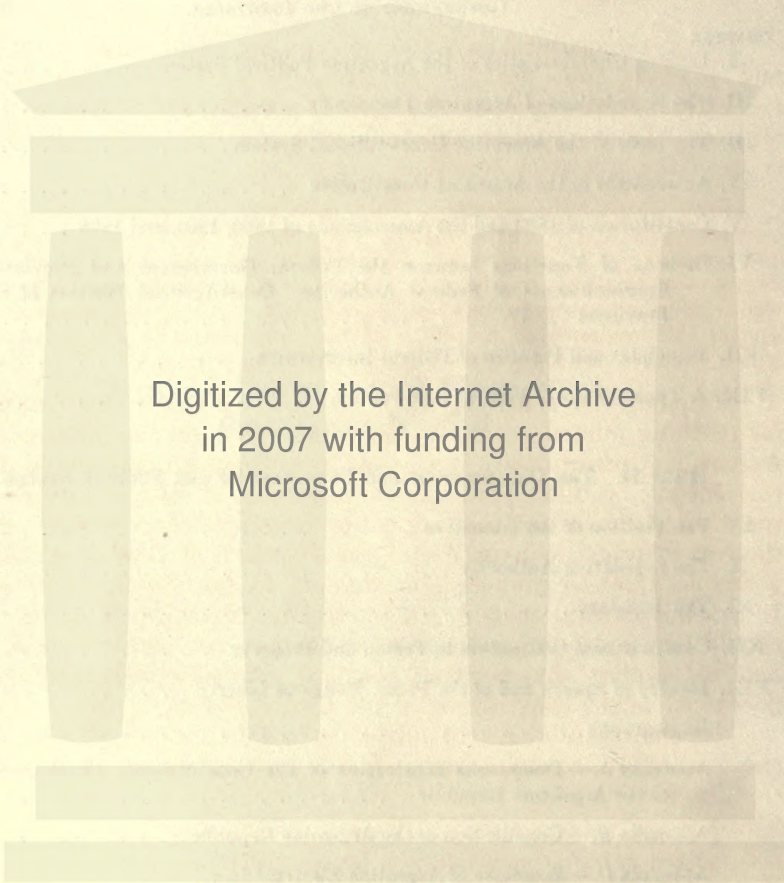

PREFACE

"When will it be possible to eliminate party prejudice from the writing of Argentine history?" — Sarmiento, Civilización y Barbarie.

Every commentator on the Argentine constitution has emphasized and in many cases exaggerated the influence of the constitution of the United States upon the form and content of the Argentine federal system.[1] In an opinion delivered on August 21, 1887, the supreme court of the Argentine Republic said:

"The system of government under which we are living was not of our creation. We found it in operation, tested by the experience of many years, and adopted it for our system. As has been well said, one of the great advantages of this plan has been that we were thus able to avail ourselves of well-established rules of interpretation which serve as a guide in the application of the fundamental principles of the constitution in all those cases in which we have not altered the wording of the instrument."

Although the constitution of the United States had exerted a far-reaching influence on Alberdi, whose work on the "Bases of the Argentine Constitution" was used as a constitutional guide by the convention of 1853, the direct influence of the constitution of the United States on the Argentine system is more clearly seen in the constitutional convention of the Province of Buenos Aires, convened in 1860 to propose amendments to the federal constitution. It was but natural that in this convention the spirit of states' rights should be more pronounced than in the national convention of 1853, and to support this position constant reference was made to the provisions of the constitution of the United States.

The chairman of the committee on constitutional amendments of the Buenos Aires convention, in the report submitted to the convention, said:

"The federal form of government once accepted, the committee has been guided in its recommendations by the provisions of a similar constitution, recognized as the most perfect, viz., that of the United States.

"The provisions of this constitution are most readily applicable to Argentine conditions, having served as the basis for the formation of the Argentine Confederation. . . . The democratic government of the United States represents the last word of human logic, for the constitution of the United States is the only one that has been made for and by the people. . . . It would, therefore, be both presumptuous and a proof of ignorance were we to attempt any innovations in constitutional organization, thus ignoring the lessons of experience and the manifest truths accepted by the human conscience."

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[1] See Chapter I.

In the convention of 1860, as in the convention of 1853, there was a marked tendency to exaggerate the influence of the form of government upon the destinies of the country. Thus the chairman of the committee on amendments to the constitution, Dr. Velez Sarsfield, in presenting the report of the committee, said:

"The constitution of the United States has assured the happiness of a great continent for more than seventy years. The legislators of the Argentine adopted this constitution as their model . . . but did not respect its sacred text, and with ignorant hands attempted to improve upon it by suppressing certain provisions and by amending others. Your committee has done nothing more than restore to our system those portions of the constitutional law of the United States which the convention of 1853 attempted to modify."

It is also worthy of note that all the early commentators on the Argentine constitution were dominated by the principles formulated in the constitution of the United States.[1]

Sarmiento's work [2] is, in the main, an attempt to prove that the Argentine Republic should profit by the experience of the United States in all constitutional matters. The translation of Story's "Commentaries," by Nicolás Antonio Calvo,[3] and of a digest of the decisions of the supreme court, by Orlando Bump,[4] also exerted a marked influence on the political ideas of the leading statesmen and writers of the period. In 1868 Dr. José María Cantilo published a translation of the "Federalist," which was widely read.

Late in the seventies a reaction against this worship of the constitution of the United States became noticeable. This tendency first appeared in a commentary by Florentino Gonzalez,[5] and became more marked in the subsequent works of Jose Manuel Estrada,[6] Francisco Ramos Mejía,[7] Aristóbulo del Valle,[8] Manuel A. Montes de Oca,[9] and especially in the lucid work of Joaquin V. González.[10] In all these works (especially in the last two) the necessity of adapting the political system to the traditions, environment, and dominant political ideas of the people is strongly emphasized. The impossibility of transplanting a foreign political system and the instability and unrest which necessarily follow such attempts dominate the constitutional discussions in these later writings. This same tendency to test the strength of the political system by the degree of

[1] See Rivarola, Del Régimen Federativo al Unitario, Chapter XII, Buenos Aires, 1908.
[2] Comentarios de la Constitución de la Confederación Argentina, con numerosos documentos ilustrativos del texto.
[3] Comentario sobre la Constitución federal de los Estados Unidos, Buenos Aires, 1861.
[4] Decisiones Constitucionales de los tribunales de los Estados Unidos. Buenos Aires, 1866.
[5] Lecciones para servir á la enseñanza en la Universidad de Buenos Aires, 1879.
[6] Derecho Constitucional.
[7] El Federalismo Argentino. Buenos Aires, 1889.
[8] Nociones de Derecho Constitucional, Vol. I. Buenos Aires, 1897.
[9] Lecciones de Derecho Constitucional. 2 vols. Buenos Aires, 1902.
[10] Manual de la Constitución Argentina. Buenos Aires, 1897.

its adaptation to national characteristics is seen in the most recent commentaries, those of Agustin de Vedia,[1] Perfecto Araya, and Gonzalez Calderon.[2]

In spite of the many points of similarity in the wording of the constitutions of Argentina and the United States, the constitutional practice of the two countries presents many contrasts of fundamental and far-reaching significance. The opportunity is thus afforded to study the operation of constitutional provisions identical in form under totally different conditions. Although the physical environment and economic conditions of the Argentine Republic present many points of similarity with certain regions of the United States, the political antecedents and traditions of the two countries are fundamentally different.

The study of the political institutions of the Argentine Republic offers material of great value to the student of political science. An analysis of the successive stages in the constitutional development of that country throws much light on the important problem of the relation between constitutional form and constitutional practice and at the same time enables us to secure a clear idea of the nature of the forces that determine the operation of a written constitution.

The data for this study were collected during a residence of fifteen months in the Argentine at three different periods, the first of six months in 1906–07; the second of four months in 1908; the third of five months in 1914.

It is impossible to make ample acknowledgment for aid received and courtesies enjoyed from members of the government, university professors, and individual investigators. The unfailing readiness to render every possible assistance constitutes one of the most gratifying souvenirs of my stay. While thus acknowledging all these courtesies, I desire to express a special obligation to Joaquin V. González, ex-president of the National University of La Plata, and to his lamented associate, Dr. Agustín A. Álvarez, vice-president of the same institution. To their constant counsel and guidance any value which this monograph may possess is primarily due.

L. S. Rowe.

[1] Constitución Argentina. Buenos Aires, 1907.
[2] Comentario a la Constitución de la Nación Argentina. Buenos Aires, 1908.

PART I.

HISTORICAL ANTECEDENTS.

RELATION OF THE FEDERAL GOVERNMENT TO THE PROVINCES.

CHAPTER I.

LEADING CHARACTERISTICS OF THE ARGENTINE POLITICAL SYSTEM.

One of the most serious obstacles to the scientific study of the political institutions of the South American countries has been the tendency to group them in one class and to regard their history as a succession of revolutions and dictatorships. Any serious study of the political institutions of these countries must at the outset recognize:

(1) That it is impossible to study South America *en bloc*. Fundamental differences in mode of settlement, in colonial organization, and in social development subsequent to independence have determined in each the form of government and the content and operation of political institutions.

(2) That the successive revolutions and dictatorships which have occurred in many of the countries of South America must be studied as integral parts of their constitutional development, possessing a far-reaching institutional significance and in many cases marking the successive stages in the advance of the political system toward a more democratic basis through the recognition of popular rights as against class privilege.

The contrast, for instance, between the political development of Chile and the Argentine Republic is perhaps greater than is evidenced in the political progress of France and Italy. The three distinct streams of Spanish migration into the Argentine Republic, viz., from Cuyo, from the "Alto Peru," and through the River Plate, combined with the inherited Spanish local or regional spirit, laid the foundations of Argentine federalism and thwarted the attempts to establish a unified and centralized government. In Chile, on the other hand, the unity in the conditions of settlement and the pronounced centralization which characterized not only the form but the actual operation of the Spanish colonial administration prevented the development of any "separatist" spirit and led to the growth and maintenance of a unified form of government which no subsequent upheavals have been able to disturb.

The conflict between the federal and unitary principles constitutes one of the most instructive chapters in the history of many of the South American countries. In every case this struggle represents far more than a mere clash between opposing political ideas. It mirrors a deeply rooted social struggle, the full significance of which is only now beginning to dawn upon the historians of these countries.[1]

[1] See Dr. Ernesto Quesada's study of the conflict between the federal and unitary principles in the Argentine Republic in a work entitled "La Epoca de Rosas," Buenos Aires, 1898.

In no country has this struggle been as deeply significant as in the Argentine Republic. The constitution of 1853 is, it is true, modeled in part after the constitution of the United States, but it is a mistake to suppose that this signifies a blind attempt to transplant a political system to unprepared soil. On the contrary, a careful study of the antecedents [1] of the Argentine constitution will show that the attempts made in 1819 and 1826 to form a unified state not only failed, but threw the country into a series of convulsions which paved the way for the dictatorship of Rosas. At that time it was quite as impossible to establish a unified state in Argentina as it would have been to establish a similar system in the United States at the time of the adoption of the constitution in 1787, for such a system would have involved the reduction of the states of our federal union to the position of provinces.

The strong particularistic or sectional sentiment inherited from the Spanish colonial epoch, together with the loyalty of the people to local leaders and the desire of these leaders to maintain their position, made the establishment of a federal system inevitable. Although there existed nothing approaching an organized public opinion, the traditional and inherited views of the people regarding political organization rebelled against any attempt to destroy the identity of the local subdivisions to which they were attached and about which were clustered their hopes and aspirations. The constitution of the United States, however, represented a convenient and above all a thoroughly tested expression of the fundamental principles of federalism, in harmony with the inherited ideas and political aspirations of the mass of the people. The most cursory study of Argentine history demonstrates that the national sanction given to the federal system in 1853 was quite as inevitable as the adoption of a similar system in the United States in 1787, or in Germany in 1871.

The establishment of a form of government in harmony with the dominant political ideas of the people does not constitute a guarantee that the subsequent development of the system or its actual operation will conform to the views of the founders of the system. The political ideals of a people may determine the establishment of a particular form of government, but its actual operation is determined by forces beyond their control. It is this wide discrepancy between the views of the framers of the Argentine constitution and the actual operation of the political system that gives to its study so deep an interest to students of political science.

While, therefore, the form of government provided for in the Argentine constitution of 1853 was the logical and inevitable outcome of the political training and the political ideas of the people, the development of the political system has been quite different from that which the founders had in view.

[1] See Chapter IV.

At the time of the adoption of the present constitution (1853), the Argentine Republic, covering an area of 2,885,620 square kilometers, possessed a population of about 1,000,000 inhabitants, *i.e.*, about 1 inhabitant to 3 square kilometers. There were no railroads. Taken as a whole, the country was still in the pastoral state. The conditions of life were exceedingly primitive, but the isolation of the provinces served to keep alive a distinctively local spirit which violently opposed any attempts at political consolidation. The growth of population and development of means of communication were very slow during the first two decades after the adoption of the constitution of 1853. In 1860 the total population was about 1,210,000 [1] with but 1 inhabitant to 2.4 square kilometers. In 1869, the date of the first official census, the total population had increased to 1,830,214, or 1 inhabitant to 1.5 square kilometers. Between 1869 and 1895, the date of the second census, the population more than doubled. At the latter date the total population was 4,044,911, viz., 1.4 inhabitants to 1 square kilometer. In 1914, the date of the third census, the population was 7,905,502, or 2.6 inhabitants per square kilometer. During this period the railroad mileage was as follows: 6 miles in 1857; 23 miles in 1866; 439 miles in 1870; 1,509 miles in 1880; 5,658 miles in 1890; 8,476 miles in 1896; 12,177 miles in 1906; 20,088 miles in 1913; 20,316 miles in 1917.

With the increase of population, the gradual transition from cattle-raising to agriculture, and the higher standard of life accompanying this economic advance, the provincial governments were confronted with a group of industrial and social problems, the solution of which required a considerable extension of governmental functions and a corresponding increase in the provincial budgets. These new demands upon the provincial governments emphasized the poverty and lack of resources of the less advanced sections of the republic. The growth of the towns made it necessary to improve sanitary conditions through the construction of drainage-works and adequate water-supply. The limited income of most of the provinces would not permit these outlays.[2] The widespread illiteracy [3] aroused the more enlightened element of the provincial population to the necessity of better school facilities, but it was soon evident that the provincial budgets would be unable to bear the financial burden resulting from such an extension of primary education.

In this emergency the provinces followed the line of least resistance and appealed to the federal government for assistance. The political effect of the assistance thus rendered we will have occasion to examine

[1] Calculated by Martin de Mowry.

[2] In 1905 the total income of all the provinces exclusive of Buenos Aires (*i.e.*, thirteen provinces) was $10,560,000 — less than the income of the Province of Buenos Aires. The total income of all the provinces was $22,000,000, about one-third the total income of the federal government.

[3] In 1904, of a total of 592,000 electors, 285,000 were illiterate. For 1916, see Appendix D.

in Chapter VI. It is sufficient to say that this extra-constitutional extension of federal power into a domain reserved by the constitution to the local governments has been one of the most potent factors in the decline of the provinces as distinctive political units in the federal system. Not only has it weakened the ties of the people to their respective local governments, but it has also served to increase the hold of the federal authorities upon the provincial governments. The scramble for federal aid has led to the political subordination of the provinces to the federal government. Thus, little by little, the desire of the provinces to partake of the real or supposed federal plenty has done more to undermine the traditional spirit of local exclusiveness than all the years of agitation for a unified government.

The movement presents many analogies with the decline of local self-government in the larger cities of the United States. The constant appeal to the state governments for the solution of problems which should have been met through local effort developed in the state legislatures a tendency to interfere in purely local affairs, so marked that for a time cities lost every vestige of local self-government. It was only after a long-continued struggle, and after the passage of a series of constitutional amendments restricting the powers of the state legislatures, that the municipalities regained a part of their power to determine purely local questions.

Another factor of great importance in breaking down the spirit of sectionalism in Argentina has been the rapid development of means of communication during the last twenty-five years. The increase of railroad mileage from 1,560 miles in 1880 to 21,196 miles in 1920 signifies even more than would appear at first glance, for during this period the lines have been extended to the remote provinces of the north (Jujuy, Salta, Tucumán, and Santiago del Estero) and to the provinces and territories of the Andean region (La Rioja, Catamarca, San Juan, Pampa, and Neuquen).

The federal government, furthermore, has been gradually increasing its sources of revenue at the expense of the provinces. Thus, in 1892 the entire internal revenue system was made exclusively federal. These taxes include not merely the imposts on brewed and distilled liquors and tobacco, but also stamp duties on a long list of articles, such as bottled mineral waters, perfumery, etc.

This financial dependence of the provinces on the federal government is not limited to subsidies for extraordinary expenditures, such as the construction of public works. For many years the federal government has voted large sums for the purpose of covering deficits in the ordinary expenditures of the provinces. In 1914 La Rioja, Catamarca, Jujuy, and San Luis each received a subsidy of about $40,000 per annum for the purpose of meeting ordinary administrative expenses.

The broad interpretation of certain clauses of the constitution has further contributed toward diminishing the importance of the provinces as political entities. Thus the provision granting to the national government the power to encourage the construction of railroads has been construed to include the right to grant franchises to all lines which extend beyond the limits of one province. As there are practically no infra-provincial lines, railroad franchise grants are dependent exclusively on the federal government. In these grants the national government frequently exempts the railroads from all local taxation, thus depriving the provincial and municipal governments of another important source of revenue.

The same tendency[1] toward the substitution of national for provincial authority is to be found in the development of the educational system. Both secondary and university instruction are under the direct control of the federal government, and through granting subsidies to the provinces for primary schools the national government has acquired far-reaching powers over this branch of the educational system.

This marked tendency toward the extension of the power of the national government has been interpreted by some Argentine commentators as an indication of the breaking down of the federal system, involving the gradual disappearance of the provinces as distinct political entities and the establishment of a consolidated, unified state in fact if not in law.[2] In support of this thesis it is possible to adduce a formidable array of facts, but this interpretation fails to take into account the fundamental basis of every political system, viz., the political ideas of the people. It is true that many of the provinces lack the resources necessary to perform the functions with which they have been intrusted, and it is also true that the assumption by the national government of many of the obligations now inadequately performed by the provinces would mean both a more economical as well as a more efficient performance of these functions. Nevertheless, any attempt at a fundamental change in the constitution in this direction is certain to meet with violent opposition and to rekindle passions which, although no longer appearing on the surface, are none the less latent in the political temper of the people. Advocates of new political systems are too apt to forget that the political thought of the mass of the people is determined by inherited formulæ rather than by critical analysis, and that the political ideas corresponding to these formulæ perpetuate themselves long after the disappearance of the conditions out of which they have arisen. No one who has visited the provinces of the Argentine Republic can escape the conviction that, in spite of their ready acceptance of the financial aid of the federal government, the feeling of provincial separateness is still deeply rooted in the minds of the people.

[1] See Chapter VI.

[2] See Rodolfo Rivarola, "Del Régimen Federativo al Unitario." Buenos Aires, 1908.

The tendency toward concentration of power in the central government is not peculiar to the Argentine Republic, for it represents a process through which all federal systems pass; but the movement is more pronounced in the Argentine than elsewhere, because lack of adequate financial resources of the provinces prevents the development of counterbalancing forces to offset the extension of the power of the central government. Such a check can come only through the economic advance of the provinces. As they increase in population and wealth, they will be less dependent on the federal government and will be able to perform functions for which at present they rely on the assistance, and consequent control, of the national government.

Although the provinces are making great industrial progress, the growth of a distinctive and independent local political life is fraught with great difficulties, largely because during the last fifty years the national executive has gradually acquired a dominant influence in the political affairs of the provinces. To effect any radical modification of this situation will require far-reaching changes in the political habits of the people. In Chapter VII, on Principles and Practice of Federal Intervention, we shall have occasion to examine one of the means employed to establish and maintain this influence. During the period of his term of office the president of the republic has been able in the past to bring most if not all the provinces into harmony with his political views and tendencies. The absence of an organized public opinion, the civic apathy of the mass of the population, and the resultant impossibility of organizing permanent and well-defined national or local parties made it possible for the president of the republic in conjunction with the governor of each province to influence the selection of candidates for members of the national congress. As there was rarely any well-organized opposition party a nomination was equivalent to an election. If serious opposition did develop, the probabilities of success of the party opposed to the administration were remote. During the last few years a marked change is noticeable by reason of the awakening of public opinion and the more active participation by the masses of the people in public affairs. The political power of the President in the provinces, while still important, is no longer as far reaching as it was ten years ago.

But, it will be asked, how is the president of the republic able to assure himself of the coöperation of the governors of the provinces. In its general outlines the process is exceedingly simple, but capable of great variation in application. The usual plan was to give a recalcitrant governor the choice between submission to the views of the administration and ejection from office. Article V of the constitution provides:

"Each province shall adopt its own constitution which shall provide for the administration of justice in its own territory, its municipal system, and

primary instruction, such constitution to be framed upon the republican representative plan, in harmony with the principles, declarations, and guaranties of the national constitution. Upon these conditions, the federal government shall guarantee to each province the enjoyment and exercise of its institutions."

The broad interpretation of this article has made it possible, on any one of a series of pretexts, to intervene in the internal affairs of the province, and on the plea that the republican form of government has been undermined, to order the holding of new elections. It is a matter of common knowledge that in extreme cases the federal government has encouraged the opposition party to foment a slight local disturbance. Such disturbance, which immediately assumes the dignity of a revolution, serves as a justification for federal intervention. The federal troops take possession of the situation, a federal commissioner assumes the conduct of provincial affairs, and under his direction a new election for governor is held, which invariably results in the election of the candidate whose views are in harmony with those of the national government. The lessons of repeated experience have taught the provincial governors that their tenure of office is apt to be precarious unless they maintain the closest harmony with the central government. It is for this reason that so many pass through what the Argentines euphemistically call an "evolution of opinion," and thus place themselves in a position of relative security.

During the administration [1] of President Figueroa Alcorta (1906–1910) the federal government intervened on four different occasions in the internal affairs of the provinces, and each time with an ulterior political motive.[2]

In February 1907 the intervention in the province of San Juan was caused by an uprising against Governor Godoy. The federal commissioner declared the governorship vacant and ordered the holding of new elections for the unexpired term. As was to be expected, the political views of the new governor were in complete harmony with those of the president of the republic. A few months later a disturbance arose in the province of San Luis, the main purpose of which was to prevent the newly elected governor, who had been selected by the president, from taking office. The federal commissioner who was sent to take charge of the situation immediately ordered the installation of the governor-elect.

In 1908 a local revolution in the province of Corrientes led to another interesting instance of federal intervention. The federal commissioner in the case adopted a novel procedure. The conflict between the legislature and the governor related to the conditions

[1] In 1904 Manuel Quintana was elected president and Figueroa Alcorta vice-president. In 1906 Dr. Quintana died and was succeeded by the vice-president, who remained in office until 1910.

[2] For further details concerning these "interventions" see Chapter VII.

under which the elections for the renewal of one-third of the members of the provincial legislature should be held. Through an entirely extra-constitutional procedure the legislature proposed to the federal commissioner that all the members should resign and thus make a test of popular opinion through the election of the entire legislature. This procedure was agreed to by the governor. The new elections were held under the auspices of the federal commissioner, who was able indirectly to influence the elections and secure an overwhelming majority against the governor. The newly elected legislature immediately proceeded to impeach the governor and removed him. The legislature then appointed a provisional governor and ordered the holding of new elections, which resulted in the selection of a man in complete harmony with the views of the president.[1]

Through his hold on the provincial governors and on the local political machinery the president is usually in a position to influence the selection of candidates for the senate and the chamber of deputies. It is, therefore, only in exceptional instances that there is any real opposition between the federal executive and the local authorities. When such opposition does develop, the president is usually able to maintain his ascendency because of his hold on federal patronage and through pressure on the provincial governors.

In exceptional cases, resort is had to extraordinary measures. Thus, in the fall of 1907 the president convened the congress in extraordinary session for the purpose of voting the budget for the ensuing fiscal year. In order fully to understand the situation that developed in the course of this extra session, it is important to bear in mind that while congress is in session the executive can not intervene in the affairs of the provinces without express authorization. In order to prevent such intervention the congress determined to remain in session until the opening of the succeeding regular session. Both houses, therefore, refused to vote the budget for 1908, although the leaders of the opposition expressed their willingness to vote, from month to month, the sums necessary to meet the ordinary expenses of government. The situation was further complicated by the presidential aspirations of one of the most influential members of the Argentine senate, who attempted to force administration support for his candidacy by a threat to continue the filibuster against the budget until the opening of the regular session.

The fiscal year opened with the budget still pending. In view of this situation, on January 25, 1908, the president issued a decree withdrawing from congress the measures submitted to it in extra session and declaring the session adjourned *sine die*. In order to prevent the assembling of either house, the police were placed in

[1] In 1909 the federal government intervened in the province of Córdoba.

charge of the congressional building, with strict orders not to permit members to enter. The action of the president, although distinctly revolutionary in character, was supported by a spontaneous movement of opinion which rendered futile the attempted resistance of the legislative branch of the government.

This incident serves to illustrate the dominant position occupied by the executive in the Argentine system. In law, executive powers are more restricted than in the United States, for under the constitution the concept of executive authority includes both the president and his ministers, and no act of the former is valid without the counter-signature of the respective minister. In fact, however, due in part to the political traditions inherited from Spain, but mainly to the political subordination of the provinces to executive policy, the real power and influence of the president reach far beyond the formal grant of powers in the constitution. A strong president with a definite program has but little difficulty in securing support for his policies.

The fundamental weakness of the Argentine political system has made the lack of an organized public opinion. The far-reaching influence of opinion during periods of extraordinary excitement serves to make more prominent the absence of this indispensable element of control in the normal activities of government. Not until the public opinion of the country has been organized will the struggles between political parties truly mirror the life of the nation. Progress towards effective organization of public opinion is now being rapidly accomplished. During recent years the government and people of the Argentine Republic have addressed themselves resolutely to encouraging the participation of a larger percentage of voters in local and national elections. A campaign of education has been undertaken which has produced most gratifying results.

Legislation designed to improve the system of registration and to safeguard the sacredness of the ballot was passed during the administration of President Roque Saenz Peña. The effect of this legislation was to strengthen the confidence of the voter in the effectiveness of his ballot. The gradual awakening of public opinion to the importance of these measures has placed the political life of the country on a new and distinctly higher plane. Practices which for many years were tolerated are now so severely condemned that they will soon disappear from the political life of the country.

It is fortunate for the welfare and orderly progress of the Argentine that there is a growing conviction throughout the country that the question of federal or consolidated government is relatively unimportant compared with the basic educational and civic problems confronting the country. The people are beginning to see that the question of greater or less centralization is dependent upon economic forces independent of individual will or personal convictions.

In addition to the pressing need of encouraging immigration, the best thought and energy of the nation and all its available resources must now be directed toward the solution of three fundamental problems, any one of which is far more important to the country's future than the question of the division of power between the central and provincial governments.

The first of these is the reduction of illiteracy in the smaller towns and rural districts. The registration of voters for 1916 shows that outside of Buenos Aires in a total of 1,018,542 qualified voters, only 603,062 (59.21 per cent) were able to read and write. In three provinces, Corrientes, Santiago del Estero, and Tucumán a majority of the electors was illiterate. In the city of Buenos Aires the percentage of illiteracy was only 3.98 per cent.[1] The quick native intelligence of the Argentine "gaucho," while mitigating the unfortunate effects of this neglect, does not diminish the grave injustice thus done to the rising generation.

A second problem, far more delicate in its nature and intimately connected with the immigration problem, is the improvement in the administration of justice. There has been, it is true, much unjustified criticism of the higher judiciary on the part of foreign observers. With the cumbersome and in many respects antiquated procedure in civil and especially in criminal cases, the wonder is that the delays in the administration of justice are not longer and the miscarriages more frequent. The real problem confronting the country is not so much a change in the personnel of the courts as a simplification of the procedure and the introduction of oral public trial instead of the present written procedure, which is secret in fact, if not in law. But far more important than these changes is the improvement of the minor judiciary, especially the justices of the peace (juzgados de paz). Probably no other factor has contributed so much toward discouraging immigration.

To a foreign observer the most puzzling element in the Argentine situation is that the country has but 8,000,000 inhabitants, whereas the conditions of soil, climate, and general healthfulness are superior to most sections of the United States. Although the number of immigrants has increased within recent years, a considerable proportion of this increase is due to the floating foreign population, who go to the Argentine during the harvest and return to their native land as soon as the harvest is completed. From 1895 to 1915 the growth of immigration was as shown in table on page 13.

There has been considerable discussion as to the causes of this relatively slow increase of immigration. One peculiar circumstance which throws considerable light on the situation is the fact that

[1] See Appendix D.

comparatively few of the foreigners resident in the Argentine Republic apply for naturalization. This marked contrast with conditions prevailing in the United States is due in part to the fact that no organized campaign encouraging naturalization has been undertaken and in part to the circumstance that the foreigner feels that he may have recourse to the good offices of the legation of his country when justice has been denied him by the justices of the peace. The study of local conditions in the provinces shows that this defect, which has con-

Immigration to and emigration from the Argentine Republic 1895–1917.

Year.	Immigration.	Emigration	Excess of immigration over emigration.
1895	80,988	36,820	44,168
1896	135,205	45,921	89,284
1897	105,143	57,457	47,686
1898	95,190	53,536	41,654
1899	111,083	62,241	48,842
1900	105,902	55,417	50,485
1901	125,951	80,251	45,700
1902	96,080	79,427	16,653
1903	112,671	74,776	37,895
1904	161,078	66,597	94,481
1905	221,622	82,772	138,850
1906	302,249	103,852	198,397
1907	257,924	138,063	119,861
1908	303,112	85,412	217,700
1909	278,148	94,644	183,504
1910	338,828	97,854	240,974
1911	281,622	120,709	160,913
1912	379,117	120,260	258,857
1913	364,271	156,829	207,442
1914	182,659	178,684	3,975
			Excess of emigration over immigration.
1915 [1]	54,144	118,636	66,169
1916	40,310	80,867	40,358
1917	23,530	56,268	32,931
1918	50,662	59,908	9,246
1919(9 mos.)	43,135	51,383	9,248

[1] From 1915 on, the Argentine statistics do not take into account any immigration from Europe via Montevideo.

tributed so much toward retarding the progress of the country is due primarily to two causes:

(1) The low salaries paid to justices of the peace, a fact which increases the temptation to bribery.

(2) The absence of traditions of judicial independence. The judiciary has failed to exercise an effective and continuous check on the executive and legislative branches of the government.

The deeply rooted conviction of the immigrant that there exists a lack of adequate protection to person, but especially to property,

has aroused a feeling of distrust, which discourages immigration and diminishes the incentive to naturalization. Much could be accomplished through the organization of special associations for the protection of the immigrant, with agencies in every section of the country. The problem is a serious one, requiring the best thought and energy of both the government and citizens.

At the present time it would be unfortunate if any attempt were made to compel immigrants to take out naturalization papers. It has been seriously proposed by one of the leading statesmen to make the acquisition of Argentine citizenship a condition prerequisite to the proprietorship of land. Any such plan is certain to strengthen the feeling of distrust of the immigrant and thus discourage immigration — to-day one of the country's greatest needs. Argentina has not yet reached a point at which it is advisable to place the slightest obstacle to desirable immigration. Although the national unity of the country suffers by reason of the failure of foreigners to become naturalized, any marked diminution in the current of immigration would mean a far greater loss.

The discussion of the weaknesses of the Argentine system emphasizes the one primary, fundamental need already referred to, viz., the development of an organized public opinion. The absence of this all-important factor explains most of the shortcomings in the political life of the country. Recent years have witnessed real progress in remedying this defect. It is no longer possible for a few men to dominate the political life of the country and to play the game of politics as if it were a game of chess. The time is rapidly passing when new parties can be organized simply to satisfy the personal ambition of a few malcontents. Political parties must now have a real program rather than represent a mere personal following.

It is becoming increasingly evident to students of political institutions that the existence of republican government and democratic rule is not so much a question of the selection of officials by popular vote as the control of such officials and of the entire public administration by a well-organized public opinion, with definite standards and with the power to enforce such standards as against the personal interests of selfish politicians. Until this factor of control is developed a government republican in form is certain to be oligarchic in fact. Such an organized public opinion is rapidly making impossible government by small cliques and is creating an atmosphere favorable to the full development of Argentine democracy.

CHAPTER II.

THE FOUNDATIONS OF ARGENTINE DEMOCRACY.

Peculiarities in the development of political institutions in South America. Five periods in Argentine history: (1) The Colonial Period (prior to 1810). (2) The Revolutionary Period (1810–1816). (3) The so-called "Period of Anarchy" (1816–1829). (4) The Rosas Tyranny (1829–1852). (5) The Period of Constitutional Reorganization (1852).

Students of political science in the United States have usually taken for granted that the methods of scientific investigation applicable to the highly developed political systems of England and continental Europe are inapplicable to the republics of Latin America. In fact, there seems to be a widespread belief that the term "political system" is applied to Latin America by courtesy, but that a more exact designation would be "dictatorships tempered by revolution." It is not surprising, therefore, to find that the republics of Latin-America are usually divided into two classes, the turbulent and the peaceable. The degree of advancement is measured by the length of interval between revolutionary movements. With this simple test the conclusion is reached that the great need of the Latin-American republics is tranquillity under whatever conditions or at whatever price obtained.

This false approach to the subject has been strengthened by the use of a number of catchwords and phrases by which we attempt to explain the political situation in the countries of Central and South America. The contrast between "Anglo-Saxon" and "Latin" is constantly used to designate the difference between capacity for local self-government and the absence of this quality. We do not stop to think that through the use of these terms we beg the real question rather than solve it. The qualities which we designate as "Latin" and "Anglo-Saxon" are the result of well-defined social and economic forces which students of political science must undertake to analyze and without which our study of Latin-American institutions must ever remain a play of words rather than a scientific study.

The first step in the study of the political institutions of Latin America is a clear recognition of the fact that each of these countries has developed its own peculiar economic and political conditions and that it is quite as impossible to treat Latin America, or even South America as a whole, as it is to attempt to explain the development of all the countries of Europe by means of a few simple principles.

It is furthermore important that we divest ourselves of the tendency to judge Latin America by the standards which we have been accustomed to apply to our own political growth. Owing to a peculiar grouping of the social classes during the early development of the English common law, the basis was laid for the harmonious development of order and liberty in our political system, and the degree of stability of government is therefore a fairly accurate measure of progress when applied to our institutions. It is important to bear in mind, however, that the same rule of interpretation can not be applied to the political development of Latin America. Periods of political instability are often indications of profound social changes which are preparing the way for a higher type of institutional growth, whereas there are numerous instances in which political stability is but the cloak for oligarchical rule and the social degradation of large classes of the population.

The history of the Argentine Republic illustrates with great clearness the principles above formulated. Five distinct periods are readily distinguishable: (1) The colonial period (prior to 1810). (2) The revolutionary period (1810–1816). (3) The so-called "period of anarchy" (1816–1829). (4) The Rosas tyranny (1829–1852). (5) The period of constitutional reorganization. These periods represent the successive steps in the development of the institutional life of the country.

The colonial period in the Argentine differs from that of most of the other South American republics. The Spanish adventurers took little interest in the River Plate territory, owing to the failure to find deposits of gold and silver, and the same cause considerably reduced the incentive of the Spanish crown to maintain close control over this portion of the colonial empire. The powers vested in the viceroy of the River Plate and in the "intendentes" under his control, while far-reaching in law, were exercised in fact in the most haphazard manner. The result was that the towns were given or rather assumed wide powers of self-government, not only within their respective municipal limits, but over districts so large as to become subsequently the basis for the provincial subdivisions.

The immediate effect of this *decentralization in fact* was twofold: (1) to develop a strong local spirit, which prepared the way for separation from the mother country; (2) this same sectional feeling which prepared the way for the establishment of a federal system and which has remained a constant and insuperable obstacle to the establishment of a consolidated centralized political system.

It must, furthermore, be borne in mind that the character of the colonial period in the Argentine Republic was largely determined by the peculiar economic conditions, which differed from those of the other South American republics. During the entire colonial epoch cattle-raising was practically the exclusive pursuit of the inhabi-

tants. It was not the peaceful pastoral pursuit of the countries of continental Europe. The care of great herds of wild cattle which, however, ranged over the Argentine pampas required a type of courage and self-reliance wholly incompatible with the kind of serfdom which prevailed in other portions of Spain's colonial empire.

The concept of personal property was only imperfectly developed. No attempt was made to fence the great estates. At certain seasons of the year a great "round-up" of cattle took place and the representatives of the various ranchmen attempted to identify their property. During the intervals the "gaucho" secured his food by killing such cattle as he found, with but little reference as to whether the animals belonged to his employer or not. It is evident that in a society such as this a real aristocracy of birth was impossible. The great landed proprietors lived in the towns, usually in Buenos Aires. The majority were European Spaniards who had received large grants from the home government and who were satisfied to leave the management of these estates to native agents, provided they secured each year a certain revenue. This "absenteeism" prevented them from securing any hold on the rural population. In the history of the Argentine Republic we find nothing to compare with the settlement of some of our southern states, where agriculture was the main pursuit and where the landed proprietors lived on their estates, took an active part in their management, and exercised a dominant influence in the local government of the colonies.

Slavery as an institution never took deep root in the rural sections of the Argentine Republic. It is evident that the close control which slavery requires was impossible in a country in which cattle-raising was practically the sole pursuit and was carried on under the peculiar conditions prevailing in the River Plate provinces. Not only was control impossible, but the nomadic life of the great cattle-ranges made the maintenance of slavery as an institution impossible.[1]

In the city of Buenos Aires the conditions were different from those existing in the rural districts. Slavery maintained its vigor as a social institution for a far longer period than in the rural districts. The use of slaves for menial service and even in a considerable number of the skilled trades placed free labor in a most unfavorable position. In Buenos Aires the antagonism between the European Spaniard and the American Spaniard was pronounced, owing partly to the special privileges enjoyed by the former and the great land grants of which they were the beneficiaries. Not only were all public offices in the hands of European Spaniards, but numerous com-

[1] As early as May 25, 1811, *i.e.*, a year after the beginning of the revolution, the first step toward emancipation was taken. By decree of May 15, 1812, the slave trade was prohibited. The constituent assembly of 1813 declared that all children born of slave parents should thereafter be deemed free. (Law of February 2, 1813.)

mercial restrictions and the grant of special monopoly privileges bore heavily on the native population.

The social and economic conditions above outlined distinguish the development of the Argentine Republic from the other South American countries. Although both Peru and Bolivia belonged at one time to the same viceroyalty and were therefore subjected to the same legal and political system, their development was essentially different.

These peculiar economic and social conditions left a deep impress on the growth of political ideas. Throughout the River Plate provinces we find the principle of authority seriously undermined in the early years of the colonial régime. To the cowboy the only notion of a government is that of the leader who by superior prowess and skill is able to command respect or inspire fear. In the country districts personal leadership, inspired and maintained by a curious mixture of fear and admiration, was the only form of control to which the population would subject itself.

Although the country districts in the later history of the Argentine developed a spirit strongly refractory to all centralized authority, the lack of local control which characterized the Spanish colonial régime in the River Plate provinces made the yoke of the mother country rest lightly on the rural sections. It is not surprising, therefore, that the revolutionary movement of 1810, which marks the beginning of the second period, should have been essentially an urban movement. It was the protest of the land-owners residing in the towns [1] and the merchants who were being crushed by the burden of monopoly and special privilege. The innumerable trade restrictions which Spain imposed upon her colonial possessions were keenly felt in Buenos Aires and Montevideo and furnished the basis for the agitation which finally found expression in the assembly of May 22, 1810. The movement, although supported by the people of the city of Buenos Aires, was not primarily democratic either in its purposes or its organization. The leading citizens of Buenos Aires undertook to speak in the name of the people of the viceroyalty of the River Plate, but a comparatively small proportion of the population outside of Buenos Aires took any active interest in the movement. It is far more accurately designated as a "liberal" rather than a "democratic" movement.[2]

The real test came with the gradual acceptance by the country districts of the liberal ideas which had determined the revolutionary movement. With emancipation from the mother country an assured fact, these liberal ideas assumed a form quite different from the revolutionary period (1810–1816).

[1] See the famous Representación de los Hacendados (Petition of the Landowners) of Dr. Mariano Moreno, one of the leaders of the revolutionary movement.

[2] The cabildo abierto, which led the movement, was composed of the town council, to which a number of leading citizens were added.

The declaration of independence, while eliminating the European Spaniard from the management of public affairs, did not materially change the social organization of the rural districts. Its main effect was to make clearly apparent a process which had begun long before the revolutionary movement — the growth of the power of sectional leaders or "caudillos," as they were termed. These "caudillos" were the most characteristic product of the colonial period. Although the country had much to suffer because of their influence, it must always be borne in mind that they represented the only survival of the principle of authority after separation from the mother country.

The position of the "caudillo" has been the subject of endless unfavorable comment by Argentine historians and sociologists, and his influence has usually been regarded as a national calamity.[1] But little attention is given to the fact that these leaders, although at a later period they became an obstacle to an effective national organization, contributed considerably toward the maintenance of social order at the critical period immediately preceding and following the declaration of independence. Although ruthless in their enmities, intolerant of opposition, and brutal in the repression of disorder, they were for the most part leaders who had risen from the ranks of the people and were ever ready to avail themselves of every movement of popular opinion. In a crude, imperfect manner they laid the foundations of Argentine democracy.

It is in the third period (1816–1829) that we begin to see clearly outlined the development of the federal idea. The rise of sectional leaders was favored by the local feeling which developed as a result of the large measure of autonomy which the towns of the River Plate provinces were permitted to exercise during the colonial régime. After the declaration of independence this feeling took the form of violent opposition to subjection to any central authority, no matter how democratic such central authority might be. This refractoriness to authority inaugurated the so-called "period of anarchy," during which the country was divided into a great number of local jurisdictions, republican in name but tyrannical in fact. The period between 1820 and 1831 is one long record of bloody conflicts between local leaders, which blocked all attempts at national organization.

The fourth period (1829–1852) is marked by the conflict between the centralizing and federal movements which first resulted in a long period of absolutism under Rosas and the final triumph of the federal principle in the constitutional convention of 1852. It is impossible to draw a definite line between the third and the fourth periods, inasmuch as this conflict between the centralizing and federal prin-

[1] See Sarmiento, Civilización y Barbarie, Buenos Aires, 1889; Lucas Ayarragaray, La Anarquía Argentina y el Caudillismo, Buenos Aires, 1904; Bartolomé Mitre, Historia del Belgrano, Chaps. 30, 31, 32; Juan Agustín García (Hijo), La Ciudad Indiana, Buenos Aires, 1900.

ciples runs through the entire third period, as is attested by the unsuccessful attempts to put into effect the constitutions of 1819 and 1826.

The prolonged struggle between the advocates of a federal system and those who favored national organization under the form of a unified centralized state can not be understood if interpreted as a mere difference of political opinion as to the most effective form of government.[1] Beneath this difference of view there is discernible the great social conflict which was destined to lay the foundations of Argentine democracy.

The spirit of federalism, the origin of which reaches back into the colonial period at a time when local sentiment was being developed by the town authorities, was sustained and developed by the rural districts. The movement for a centralized national government, on the other hand, was essentially an urban movement sustained in the main by the city of Buenos Aires. Although at certain stages of Argentine history it represented the attempt of the province of Buenos Aires to dominate the rest of the country, its social significance was far deeper. The propertied classes, who represented a kind of incipient aristocracy of wealth, were convinced that a strong centralized government was the only means of assuring order, protecting property, and developing a healthy political life. The conflicts between local leaders in the provinces strengthened this belief. The large landed proprietors, who lived for the most part in Buenos Aires, and who had suffered greatly from this internal strife, joined hands with the commercial element in supporting the movement for a centralized national government. Inasmuch as the establishment of a unified political system inevitably meant the predominance of the province of Buenos Aires, the movement also found considerable support in this province among other elements of the population.

On the other hand, the mass of the people in the provinces, under the guidance of local leaders, supported the federal system not because of their faith in this particular form of government, but because of the widespread feeling that through the wider powers which this system would give to the provincial governments the interests of the common people would be more safely guarded.

The rural population was convinced that the federal plan was the only one which would give them an opportunity to participate directly in the government. They had constantly before them the picture of local leaders risen from the ranks, with whom they were personally acquainted, and who were ever ready to listen to their complaints. To them a central government in Buenos Aires meant the triumph of an aristocracy and presented the direst possibilities

[1] For the treatment of this period of Argentine history, the author desires to acknowledge his indebtedness to the admirable work of Dr. Ernesto Quesada, La Epoca de Rosas, 1898.

of tyranny and oppression. Viewed in this light, the conflict between federalism and centralization assumes quite a different character. It becomes a struggle between the democratic aspirations of the mass of the people of the provinces and the conservative oligarchic tendencies of the well-to-do urban population. With this distinction in mind, it is less difficult to understand the ascendency and almost absolute power exercised by Rosas during the period 1829 to 1852. His opposition to the party which favored a strong centralized government, known as the "Unitarios," was interpreted by the common people of the provinces as an espousal of their cause against a movement which they regarded as a first step toward the establishment of a monarchy.

Whatever may have been the political ideas of Rosas, he found himself in a position which forced him to rely on the common people for support. The wealthy and the cultured classes of Buenos Aires were not only his sworn enemies, but were actively conducting a campaign which, if not checked, meant his downfall. Soon after acquiring power Rosas inaugurated a system of ruthless persecution of his opponents which to most of them meant either death or exile. This exercise of tyrannical power against his enemies has absorbed attention so completely that the profound social changes which took place during the Rosas period have been lost sight of. The twenty years of his ascendency mark the beginnings of political and social self-consciousness of the common people. The contrast between the proceedings of the constitutional conventions of 1826 and 1852 furnishes the measure of Argentine social progress during the quarter century.

With the constitutional convention of 1852, the Argentine Republic entered upon the fifth stage of its development. Although internal strife still made impossible the final step in national organization, the great fundamental problems were solved. The struggles since the declaration of independence had demonstrated that whatever its disadvantages, the work of national organization would have to proceed on the basis of the federal principle. No matter how weak the individual provinces might be, no matter how great their poverty and inability to perform the function of sovereign units in a federal system, it was evident that the people would not accept any other plan. In 1819 and 1826 the constitutional convention gave but little attention to the wishes of the mass of the people of the provinces; in 1852 it was no longer possible to ignore these demands. However imperfect the mechanism for the expression of the popular will, there is ample evidence that an organic public opinion had begun to develop and that it was unalterably opposed to a highly centralized national government. Although the settlement of this question did not assure national unity, the conflicts which followed the adoption

of the constitution of 1853 mark successive steps in the political integration of the country. Interpreted in this light the war between Buenos Aires and the provinces in 1861, the numerous revolutions of 1875, 1876, and 1877, and the second war between Buenos Aires and the provinces in 1880 represent stages in a political process which has given to the country a political system which, in spite of its defects, is in harmony with the political ideas of the mass of the people and furnishes the basis for the development of an institutional life and vigor which will in time make real the ideals of the framers of the constitution.

CHAPTER III.

THE BASIS OF THE ARGENTINE CONSTITUTIONAL SYSTEM.

The cabildo and the town. The basis of the constitutional system.[1] The Cabildos: Difference of opinion as to part played during colonial period; Wide powers exercised; Assumption of power at critical periods; Conventions of town delegates. The cabildo of Buenos Aires in the revolution of 1810. The towns as the basis of national organization. The formation of the provinces of the Argentine Republic. The conflict between the "consolidated" and the "federal" principles in national organization.

THE CABILDOS.

Among the historians of the Argentine Republic the widest difference of opinion prevails as to the part played by the local governments — the so-called "cabildos" — during the colonial period and during the early years of the republic. To some, the cabildo is the nursery of Argentine liberty, the source of those impulses toward freedom which kept alive the spirit of independence and which finally led to separation from the mother country. To others the cabildo of the colonial period is the servile agent of the viceroy, perpetuating the tyrannical power of the local oligarchies and enabling the central government to maintain its control over local policy.[2]

It has been abundantly proven that the colonial cabildos were not the democratic institutions which some enthusiastic historians would have us believe, but it is equally true that in spite of their oligarchical character they enjoyed the respect of the people and became the natural heirs to authority, not only during the troubled period immediately following the revolution, but also during the formative years of the republic. In every instance in which the power of the national government was paralyzed by reason of internal strife, we find the cabildos assuming control. The important part they played in the institutional development of the nation is attested by the fact that it was to a great extent due to their influence that the sectional feeling was kept alive in the Argentine and led ultimately to the adoption of the federal instead of the consolidated form of government.

In studying the system of local government it must always be remembered that, owing to the failure to find gold in the region which now constitutes the Argentine Republic, neither the Spanish crown

[1] In the preparation of this chapter the author desires to acknowledge his indebtedness to the valuable study of Francisco Ramos-Mejía, El Federalismo Argentino.

[2] *Cf.* Del Valle, Derecho Constitucional; Ramos-Mejía, Federalismo Argentino.

nor its direct representative, the viceroy, nor even the district governors, found it necessary to exercise anything approaching the close control which characterized Spanish rule in Peru.[1] While reserving absolute legal power, the towns were, as a matter of fact, permitted considerable freedom of action. This developed a feeling of local independence which manifested itself in the assumption of wide political powers by the town authorities during the decades immediately following separation from the mother country and in the spirit of territorial independence and separateness which finally blocked all attempts to form a unified state. To these peculiar local circumstances must be added the important fact that the majority of the Spanish settlers in the Argentine Republic came from Navarre, Aragon, and the Basque provinces, with the spirit of local independence and the adherence to local privileges strongly developed.

It is only necessary to read the published archives of Buenos Aires and Córdoba in order to understand the wide powers enjoyed by the local governments.[2] Nothing seemed foreign to their sphere of action. In addition to the distinctly local services, they controlled the police service, administered local criminal justice, and in many cases provided for the defense of the surrounding districts against possible invasion by the Indians. In addition to these functions, the local authorities had the power to convene what were known as cabildos abiertos, a kind of town meeting to which all the prominent citizens of the locality were invited. When thus assembled the cabildo assumed practically unlimited authority, exercising the widest political powers, often acting in the name of the entire district, and in times of crises in the name of the nation itself. The fact that the towns were organized on a plan similar to the English close corporation, with ample power to designate their own members, while tending to develop a strong oligarchical spirit, also served to increase the spirit of local independence and the aversion to anything like outside interference.

The important part which the towns were called upon to play during the revolutionary period was foreshadowed in the action of the cabildos during the latter half of the eighteenth century. The towns began to look after the larger interests of the provinces; conventions of representatives of the cabildos being called for this purpose. One of the most important of these was that of the province of Salta, held in 1776. This convention dealt with questions of taxation, the condition of the Indians, and various other matters of common

[1] See Report of the Viceroy, Marquis de Montesclaros, made to his successor in 1615, Coleccion de Documentos Ineditos del Archivo de Indias, Vol. VI, p. 191. Also cited by Ramos Mejia in El Federalismo Argentino, p. 164.

[2] Up to the present time these are the only archives published. The vast fund of historical material contained in the local archives has as yet been utilized to a very limited extent. The two collections above referred to are: (1) Acuerdos del Cabildo de Buenos Aires; (2) Archivo Municipal de Cordoba.

interest. It is significant that these conventions of town delegates were the prototypes of the subsequent national assemblies of the United Provinces of the River Plate.

The history of the Argentine during the colonial period clearly shows that the towns and their representative authority, the cabildo, mark the first step in the political development of the country. While the provinces, prior to the declaration of independence, represented little more than vast administrative districts with no distinctive life of their own, town institutions acquired such strength and vigor that they were able to tide over the formative period, preserving the country, immediately after the destruction of the power of the Spanish crown, from disintegration and anarchy.

THE CABILDO OF BUENOS AIRES IN THE REVOLUTION OF 1810.

The circumstances attending the revolution of May 1810 clearly illustrate the important part played by the town governments in the formative period of the national government. It is important not to lose sight of the fact that the revolutionary movement itself was fomented by the town authorities, and so far as there was any unity in the movement it was due to agreements between the cabildos. With the destruction of the power of the viceroy the purely artificial character of the provincial subdivisions became apparent. The town governments were the only political units which had become identified with the life of the people and therefore furnished the only basis for the new political structure which the founders of the republic were called upon to rear.

The revolution which finally led to the independence of the Argentine was initiated by a large assembly composed of the council of the city of Buenos Aires, to which the more prominent citizens had been invited. The assembly thus called together, composed of about 200 members,[1] was known in the Spanish administrative system as the *cabildo abierto*. Legally it enjoyed no powers beyond the limits of the local administrative district. At the first session of the assembly this lack of authority to speak in the name of the nation was pointed out by one of the leaders, but to this reply was made that in the absence of any constituted authority to protect the interests of the people, the cabildo was justified in assuming this power. On May 22, 1810, this assembly adopted a resolution declaring that the time had arrived to provide a government to take over the powers heretofore exercised by the viceroy and that the cabildo would place the administration of the affairs of the nation in the hands of a board until such time as a convention of delegates from all the provinces should finally determine the form of national government.

[1] 450 invitations were sent out, but only 220 answered the first roll-call.

Instead of depriving the viceroy of all authority in accordance with the demands of the people of Buenos Aires, the assembly first attempted to carry into effect a compromise measure which provided that a governing board of five members be organized, of which the viceroy should be president. While still vested with executive authority, his orders and decrees required the countersignature of all the other members. The resolution furthermore provided for the complete separation of the judicial from the executive authority, the necessity of approval of all new taxes by the *cabildo*, the publicity of accounts, and finally directed the board to notify all the towns within the former territorial jurisdiction of the viceroy of the River Plate to hold open cabildos for the purpose of electing representatives to a national congress which should determine the form of national government.

Several distinguished historians of the Argentine, notably Francisco Ramos-Mejia,[1] have expressed deep disappointment that this plan of organization was not given a fair trial. In their view the form of government thus established was admirably adapted to tide over the transition period. It stood in organic relation with the form of government to which the people had become accustomed and therefore furnished the basis for the gradual development of political institutions in harmony with the customs, traditions, and political education of the people. It is interesting to note that the constitution of the United States exerted no influence in this first attempt at formulating a written constitution. The debates of the assembly furnish no indication that the American political system in any way influenced the members of the assembly. In fact, the action of the Argentine revolutionary assembly furnishes one of the few instances in which a South American republic attempted to organize a government in harmony with local political traditions. The people of Buenos Aires were determined, however, that every vestige of the power of the viceroy should be destroyed, and their opposition made impossible the form of government provided by the revolutionary board.

Popular agitation rose to a pitch which endangered the authority of the assembly itself, as the people threatened to exercise directly the supreme political authority and to organize a national government, thus destroying the assembly's power. This threat had the desired effect. The resignation of the viceroy was hurriedly demanded and on May 25 the cabildo proceeded to organize a new provisional government. While preserving the idea of a governing board, the original plan was modified by reducing the authority of the president to that of chairman of the board, with no independent executive powers.

[1] El Federalismo Argentino, *op. cit.*, p. 230 *ff.*

THE TOWNS AS THE BASIS OF NATIONAL ORGANIZATION.

The measures adopted by this provisional board to secure a definite organization of the national government further demonstrate the important part played by the towns in the political organization of the nation. The cabildos were intrusted with the election of representatives to the constitutional convention. It is true that they were directed to add to their number the leading citizens within their respective districts, but the town formed the unit of representation. The delegates to the provisional assembly of the United Provinces of the River Plate, which assembled on April 4, 1812, were representatives, not of the provinces, but of the towns. The dissolution of this assembly and the convocation of another on October 6, 1812, while involving a change of personnel, did not involve any change in the basis of representation. The usurpation of powers by this assembly led to its speedy dissolution. The provisional government, in making preparation for another assembly, determined to depart from the method of election by the town authorities. This determination was due in large measure to the dissatisfaction, especially in Buenos Aires, at the failure of the first two assemblies to fulfill the expectations of the people. The decree of the provisional government of October 24, 1812, provided for the election of delegates to a constitutional convention to assemble in January 1813.

The freemen of every town were to choose eight electors, who, together with the members of the town council, were to constitute an electoral college to designate the representatives to the assembly. The system of town representation was retained, Buenos Aires receiving four representatives, the capitals of the various provinces two representatives, and "each of the towns tributary to such capital cities, one representative."

The constitutional convention which assembled in Tucumán on March 24, 1816, was based on the same principle of town representation. Not only were the towns made the units of representation, but they were also required to provide for the payment of their delegates.

The political development of the Argentine Republic up to and including the congress of Tucumán clearly shows that during this formative period the political system rested on the town organization. Not only did the cabildo of Buenos Aires assume the leadership in the work of national organization, but every step in the process shows the important part played by the provincial towns. Representation in the constituent assemblies was at first a representation not of the towns, but of the town councils, the "cabildos." With the strengthening of the democratic spirit the representation acquired a more popular character. Throughout all these changes the towns remained the primary units of the national organization. As we shall have

occasion to see, this spirit of communal independence proved to be the determining factor in the formation of the provinces and in their development as political entities. It also was at the root of the federal system. The resistance of the towns to anything approaching a consolidated national government is the real explanation of the final adoption of the federal principle.

THE PROVINCES.

The history of the provinces of the Argentine Republic is so closely bound up with the history of the towns that it is impossible to separate them. In fact, the provinces as political entities are the logical outcome of the spirit of independence and autonomy fostered by the towns. The royal ordinance of Charles III of 1782, which removed the provinces of the River Plate from the jurisdiction of the viceroy of Peru and established the viceroyalty of Buenos Aires, did not consolidate a homogeneous territory. It is important to bear in mind the fact, already pointed out, that this territory had been settled by three distinct streams of immigration — one from Chile, which established its settlements in the district of Cuyo, another from Peru, which settled the district of Tucumán, and a third which entered by way of the River Plate, settling in Paraguay and in the district of Buenos Aires. Although speaking a common language and of essentially the same race, there was little feeling of unity between the peoples inhabiting the new viceroyalty. The great expanse of territory and the consequent impossibility of maintaining close control over the constituent districts made it practically impossible for the viceroy to consolidate the territory and develop unity of sentiment among the population. The division of the territory into eight intendencias,[1] at the head of each of which a governor was placed, was the recognition in law of the impossibility of unified administration. But even if the viceroy of Buenos Aires had been able to exercise adequate control over every portion of the territory under his jurisdiction, it is doubtful whether he would have been able to bring about political consolidation.

With the revolution and the repudiation of the viceroy of Buenos Aires, the sectional tendencies began to manifest themselves. The towns proclaimed themselves autonomous, but recognizing the necessity of some common authority, especially for the maintenance of their independence and for purposes of defense, they were prepared

[1] These eight *intendencias* were designated as follows (Gonzalez, Derecho Constitucional, p. 55): (1) Buenos Aires, which included the territory of the present provinces of Buenos Aires, Santa Fé, Entre Rios, Corrientes, the republic of Uruguay, and the section of Brazil known as Misiones; (2) Córdoba del Tucumán, including the present provinces of Córdoba, Mendoza, San Juan, San Luis, and Rioja; (3) Salta, including the present provinces of Salta, Jujuy, Catamarca, Tucumán, and Santiago del Estero. The others, Paraguay, La Plata, Potosi, La Paz, and Puno, all included territory outside the present limits of the Argentine Republic.

to maintain a central government, but regarded its establishment as a terminable compact between the territorial units which they represented.

The formation of the provinces began with the revolutionary movement. The first step was the action taken by the national assembly which, by resolution of November 29, 1813, divided the intendencia of Córdoba into two parts, designating as the province of Córdoba the section which comprised the three former provinces of Cuyo. A decree of the supreme director of the confederation, dated March 7, 1814, created the eastern province of the Rio de la Plata, which later on became the Republic of Uruguay. A further decree of September 10 of the same year created the provinces of Entre Rios, Corrientes, and Misiones.

The next step in this process of subdivision was made by the executive decree of October 8, 1814, which divided the former intendencia of Salta into two parts. The southern section was designated the province of Tucumán and included the present provinces of Tucumán, Santiago del Estero, and Catamarca. The northern section was organized into the province of Salta and included the present provinces of Salta, Jujuy, and a portion of the present republic of Bolivia. Between 1817 and 1820 the town authorities (cabildos) carried the process of subdivision still further by making provinces of the territory under their jurisdiction. In this way the present provinces of Santa Fé, Santiago del Estero, San Luis, San Juan, Catamarca, and Rioja were formed. In 1834 Jujuy was declared a province by the cabildo of the city.[1]

In the formation of the provinces the important part played by the town authorities is worthy of note. Immediately after the revolution, the more important towns assumed authority over a large section of surrounding territory. The gradual recognition of this authority led in almost every instance to the formation of a new province, which was given the name of the town whose efforts had brought about its organization. We have here further confirmation of the fact that the historical foundations of the political institutions of the Argentine Republic are to be found in the activities of the cabildos during the later colonial period and during the early years of independence.

THE CONFLICT BETWEEN CONSOLIDATED AND FEDERAL PRINCIPLES.

The early development of political institutions in Argentina is of peculiar interest to the student of political science because it illustrates so clearly the futility of attempting to establish a form of government out of harmony with the political ideas and traditions of the people. It may well be that what the country most needed during the forma-

[1] See Gonzalez, Manual de la Constitucion Argentina, p. 56 *ff.*

tive period was a strong central government, and it is also probable that, if the coöperation of the people in the various portions of the republic could have been secured, a strong, unified national government would have been best adapted to carry out the work of national organization. The great leaders, such as San Martin and Rivadavia, were so impressed with the necessity of a strong central authority that they failed to take into consideration the powerful centrifugal forces which made such a government impossible. The spirit of local autonomy which developed in the towns during the colonial period became apparent as soon as the revolution of 1810 had removed the last obstacles to its free expression. As Ramos-Mejía clearly shows,[1] the revolution brought before the country two distinct problems — the first, that of securing independence; the second, and no less important, that of effecting a national organization. While the cities of the interior enthusiastically associated themselves with the first of these movements, they were unalterably opposed to any form of national organization which threatened their separate political existence. No amount of reasoning could have convinced them that the territories which they dominated and which gradually assumed the dignity of provinces did not possess the requisites for a vigorous political life.

Whatever the defects of the system, it is evident from our present-day perspective that the federal system was the only form of political organization which could hope for even a modicum of success during the formative period. The first fifty years of the existence of the republic represent the struggle between federalism and centralization. During the period between 1810 and 1820 the dangers of foreign invasion enabled the province of Buenos Aires to assume the leadership and to impose its will on the country. None of the other provinces possessed the financial resources to organize the national defense. Temporary coöperation, however, did not signify submission, as is amply demonstrated by the impossibility of making effective the early constitutions. The anarchical conditions which so often prevailed between 1810 and 1820 were in reality the expression of the opposition of the provinces, or rather of the towns, to the attempts of the capital to effect the political unification of the nation.

The attempts of the capital city and of the province of Buenos Aires to force upon the country a consolidated national government, which began in 1810 and which found final expression in the constitutions of 1819 and 1826, were at the outset doomed to failure, as they violated those deeply rooted sectional tendencies which had their origin in the development of local institutions during the colonial period. Even the recognized commanding position of Buenos Aires was inadequate to break the force of these traditions. While dominating the constitutional convention of 1819 to the extent of

[1] Federalismo Argentino, p. 338 *ff.*

securing the adoption of a consolidated national government, the system was overthrown almost as soon as organized. The subsequent attempts to effect the same purpose only served to demonstrate more clearly the impossibility of securing its acceptance and finally resulted in the anarchy of civil war. The dictatorship of Rosas and the long period of tyrannical power which he inaugurated are directly traceable to the difficulty of harmonizing the centralizing tendencies of Buenos Aires and the spirit of local autonomy which dominated the majority of the provinces. The bitter conflict which resulted, sapped the strength of the country to such an extent as to prepare it for the strong arm of the tyrant.

It may seem idle to speculate as to the probable consequences of an early recognition of the federal principle as the basis of national organization. It is possible that the strong spirit of local independence would have made it impossible to establish a central government sufficiently strong to maintain internal order and repel invasion. The history of the country clearly shows that the federal principle furnished the only basis for national organization, however weak such organization might be. If the federal movement, as expressed in the inter-provincial agreement of February 23, 1820, between the provinces of Buenos Aires, Corrientes, Entre Rios, and Santa Fé, and the quadrilateral agreement of January 25, 1822, between the same provinces, both of which clearly recognized the federal principle, had been used as the basis for the gradual organization of the nation, it is probable that the work of completing the political organization of the nation would not have required more than half a century.

CHAPTER IV.

ANTECEDENTS OF THE ARGENTINE CONSTITUTION.[1]

The successive steps in the development of national sentiment. The provisions, statutes, and regulations between 1811 and 1816. Constitutional convention of Tucumán (1816). Inter-provincial agreements and treaties. The acuerdo de San Nicolas. The rejection of the acuerdo by the legislative assembly of Buenos Aires. The outbreak of the revolution of September 11, 1852.

The constitutional convention of 1852 is usually referred to by Argentine commentators as marking the beginning of the epoch of national organization. It is important to bear in mind, however, that the form of government adopted by that convention, although profoundly influenced by the constitution of the United States, represents a step in the development of the Argentine political system which stands in direct and organic relation with the system which it replaced. The successive steps in this process are marked by the provisional regulations of October 22, 1811,[2] the provisional statute of November 22, 1811,[3] the statute for the security of the individual of November 23, 1811,[4] and the regulations for the administration of justice of January 23, 1812.[5] The mere enumeration of these instruments is sufficient to demonstrate that they represent distinct stages in the development of national sentiment which came to full fruition in the constitution of 1853 and the amendments of 1860, 1880, and 1898. The first general constituent assembly of the United Provinces of the River Plate, which met in Buenos Aires on January 31, 1813, adopted a series of fundamental laws which, considered jointly, constitute a well-defined constitutional system. These organic laws are as follows:

1. The statute of February 27, 1813, organizing a national executive authority designated as the supreme director.
2. The statute of February 26, 1814, modifying and enlarging the powers of the national executive.
3. The regulations for the administration of justice (reglamento de la administracion de justicia) of September 6, 1813.

In addition to its powers as a constitutional convention, this assembly assumed legislative powers and adopted a number of important laws, among which should be mentioned the abolition of

[1] For the data contained in this chapter the author is indebted to the valuable work of Joaquin V. Gonzalez, "Manual de la Constitucion Argentina" and of Aristobulo del Valle, "Nociones de Derecho Constitucional."

[2] Reglamento Provisorio de 22 de Octubre, 1811.

[3] Estatuto Provisional de 22 Noviembre, 1811.

[4] Estatuto de Seguridad Individual del 23 de Noviembre, 1811.

[5] Reglamento de Institucion y Administracion de Justicia de 23 de Enero, 1812.

slavery (February 2, February 4, and March 12, 1813), the abolition of torture in criminal prosecutions (May 21, 1813), the abolition of the tribunal of the inquisition (March 24, 1813), the abolition of monopolies and restrictions upon foreign and domestic trade.[1]

The second constituent assembly convened in Tucumán in 1816 and, after issuing a formal declaration of independence, transferred its labors to the city of Buenos Aires and there adopted a provisional statute [2] for the administration of the affairs of the nation, which was to continue in force until the formulation and adoption of a permanent constitution. This statute provided for a national executive to be known as the director of state (director del estado), elected by the congress. It was further provided that the governors of provinces be appointed by the national executive from lists submitted by the town authorities of the respective provinces. In this fundamental law we find incorporated many of the constitutional guarantees which are contained in the constitution of 1853.[3]

The constitution adopted by the constituent assembly of 1817 and finally promulgated on April 22, 1819,[4] although in operation but a few months, presents considerable historical interest, because it expresses so clearly the conflict between the federal and the consolidated principles of national organization, which have played a leading part in Argentine history. In this convention of 1817 the consolidated principle triumphed, but the influence of local leaders was sufficient to thwart the efforts to put it into operation. The national congress, intimidated by local leaders, especially by the famous Artigas, adjourned, placing the direction of national affairs in the hands of the town authorities (cabildo) of Buenos Aires. With the dissolution of this congress the country enters upon a prolonged period of civil war.

Complete anarchy was avoided only through a series of agreements between the governors of several of the provinces. The most notable of these was the treaty of Pilar between the governors of Entre Rios, Santa Fé, and Buenos Aires, signed February 23, 1820, providing for a loose form of federation.[5] This was followed by the famous quadrilateral treaty of Janaury 25, 1822,[6] between the governments of Buenos Aires, Corrientes, Entre Rios, and Santa Fé, which was designed to secure freedom of commerce and navigation between these provinces and to secure the benefits of domestic peace.

The necessities of national defense, especially the danger of invasion by Brazil, gradually brought the provinces closer together. During

[1] See Trabajos de las primeras asambleas Argentinas desde la Junta de 1811 hasta la disolucion del Congreso en 1822, Vol. I, 1811–1820.
[2] Reglamento Provisorio para la direccion y administracion del Estado del 3 de Deciembre, 1817.
[3] Registro Nacional, 1817, Vol. I, pp. 441–454.
[4] *Ibid.*, 1819, Vol. I, pp. 502–508.
[5] Vicente Fidel Lopez, Historia Argentina, Vol. XIII, Chap, II, p. 143 *ff.*
[6] Registro Nacional, 1822, Vol. II, p. 4.

the year 1820 a board of representatives of the provinces, known as the Junta de Representantes, was organized. Although wielding comparatively little influence, it was nevertheless the outward expression, during the years of anarchy immediately following 1819, of the social and racial, if not of the political, unity of the provinces of the River Plate.[1] In 1824 [2] this junta passed a law authorizing the calling of a new constitutional convention. On December 6 of the same year delegates of Buenos Aires, Santa Fé, San Luis, Entre Rios, Córdoba, Tucumán, Salta, Mendoza, Santiago del Estero, Corrientes, Jujuy, and Misiones met in Buenos Aires for a preliminary conference and on December 22 the convention was formally installed. The constitution adopted by this convention (December 24, 1826) was based on the constitution of 1819, with some modifications in the organization and method of election of the executive and legislative authorities, and provided for a consolidated system of government, the provinces being reduced to mere administrative subdivisions.[3] In addition to adopting the constitution the convention nationalized the city of Buenos Aires, declaring it the federal capital.

The submission of this constitution to the provinces was the signal for a general movement of local leaders against its acceptance. To these local leaders of the provinces a consolidated political system meant the supremacy of the province of Buenos Aires and their consequent subordination. This they were determined to combat at whatever cost. The settlement of the conflict with Brazil through the establishment of the independence of Uruguay removed the last obstacle to the violent assertion of this opposition.

The anarchical conditions which accompanied the struggle between consolidationists and federalists finally led to the dictatorship of Juan Manuel Rosas, who, although ostensibly representing the federalist cause, succeeded in establishing a form of absolutism

[1] It is a notable fact that these inter-provincial treaties played a most important part in the process of national organization. Amongst the most important of these we may mention:

1. Treaty of peace and commerce of August 7, 1829, between Córdoba and Santa Fé.
2. Treaty of peace, friendship, and alliance of October 19, 1829, between Buenos Aires and Santa Fé.
3. Treaty of peace, friendship, and alliance of October 27, 1829, between Buenos Aires and Córdoba.
4. Treaty of peace and friendship of April 16, 1830, between San Juan and Córdoba.
5. Treaty of peace, friendship, and offensive and defensive alliance of July 5, 1830, between Córdoba, Mendoza, San Luis, and Rioja.
6. Treaty of union and alliance of August 31, 1830, between Córdoba, Mendoza, San Luis, Rioja, San Juan, Catamarca, Santiago, Salta, and Tucumán.
7. Treaty of January 4, 1831, between Buenos Aires, Santa Fé, and Entre Rios, which furnished the basis for the agreement of San Nicolas (Registro Nacional, Vol. II, p. 279).
8. Agreement of San Nicolas of May 31, 1852, upon which the constitution of 1853 rests (Registro Nacional, Vol. III, pp. 13–16).
9. Treaty of peace between Buenos Aires and the confederation of November 11, 1859, and under which Buenos Aires was brought into the union.

[2] Law, February 27, 1824.

[3] Registro Nacional, Vol. II, pp. 1926, 1939, 1940, 1947, 2083, 2098, 2103.

which continued until 1852. In 1829 he was elected governor and captain-general of the province of Buenos Aires, and at the same time intrusted with the conduct of the foreign relations of the River Plate provinces. In 1835 his power was further increased by a plebiscite which placed supreme political power in his hands.[1]

This period of more than twenty years (1829–1852) in the history of the Argentine Republic is usually ignored by the historians of the country's constitutional development on the ground that a period of dictatorship has nothing to do with the orderly development of free institutions, and that it is, therefore, to be regarded as abnormal and "outlawed." So distinguished a publicist as Del Valle [2] expresses the prevailing opinion amongst Argentine constitutional lawyers when he says:

> "The bloody dictatorship of Rosas teaches an important lesson, but it furnishes no material for our study. Despotism is not a political institution, but rather the suppression of all rules and principles of social government. We must, therefore, pass over this sad period and renew our studies with the first attempts at national re-organization which began at the close of this epoch."

It is only within the last few years that a broader view of this important period is making itself felt. Whatever the verdict as to the means employed by Rosas to carry out his plans, it is evident that his twenty-three years of unquestioned authority not only left a deep impress on the institutions of the country, but, in a sense, prepared the way for the national reorganization of 1853.[3] Federal institutions in the Argentine were incapable of vigorous growth so long as the tyranny of petty provincial leaders continued. One of the first effects of the dominant power of Rosas was to curb the power of these local tyrants, whose arbitrary measures were an insuperable obstacle to the development of anything approaching local self-government in the provinces. In spite of his brutal and almost savage policy in repressing all opposition, the government of Rosas marks a step in the process of national organization, the full effects of which can be seen when we compare the so-called federalism of 1829 with the federalism of 1853. The former was but a cloak for anarchy; the latter gives evidence of the organic unity without which a federal system is impossible. Another fact which deserves consideration in estimating the influence of Rosas is the orderly methods which he introduced into the public administration. It was well known that he would not tolerate inefficiency in the conduct of

[1] Technically designated as "La suma del Poder Publico." Article XXIX, constitution, 1853, specifically prohibits the granting of supreme political power to the executive or legislative authorities of the nation or of the provinces.

[2] Derecho Constitucional, p. 475. See also Alberdi, Organizacion de la Confederacion Argentina, edition 1856, p. 1.

[3] See the important volume of Ernesto Quesada, La Epoca de Rosas, Buenos Aires, 1898; also, Adolfo Saldias, Historia de la Confederacion Argentina, 2d ed., 5 volumes.

public business and punished with almost brutal severity the slightest laxity in public accounts.

But by far the most important achievement of this period was its influence on the social organization of the country.[1] Although the first steps in the separation from the mother country were supported by a popular movement, the period immediately following the declaration of independence showed distinct signs of the aristocratic trend which the movement soon assumed. In each of the provinces an oligarchy was gradually establishing itself which, if permitted to develop, would smother any attempt toward the development of a real democracy. Although the Rosas government was anything but a free government, its effect upon the Argentine social organization was to prepare the way for a real democratic movement. Although his government was a reign of terror, it was directed in the main against the relatively small groups whose main purpose was to monopolize the political life of Buenos Aires and the provinces. When Rosas was compelled to relinquish the government after the battle of Caseros, the spirit of special political privilege which had characterized the first decades of independence had given way to a spirit of equality amongst the common people, which gave the nation a reserve civic force which it had never before enjoyed. As Quesada [2] clearly points out, Argentina passed through a social revolution during the government of Rosas, the result of which was to place the country on the road toward a real democratic development.

The downfall of Rosas in 1852 and the assembling of a new constitutional convention, while marking therefore an epoch in the history of the country, stand in close and organic relation with the long period of tyranny which preceded.

General Urquiza, who led the allied forces against Rosas, was anxious to hold a convention with the least possible delay for the purpose of framing a new constitution. He realized that the position of the province of Buenos Aires in the federation presented many and serious difficulties and he was determined to have the fundamental problems settled before the opposition had opportunity to become thoroughly organized. Although General Urquiza was complete master of the situation during the period immediately following the battle of Caseros, he did not make full use of this power until the province of Buenos Aires began to show hostility to his plans. One of his first acts was to appoint Dr. Vicente Lopez provisional governor of Buenos Aires and to intrust the government of the province with the conduct of the foreign relations of the nation. In the formation of his cabinet Dr. Lopez appointed Dr. Valentino Alsina minister of government. General Urquiza was well aware

[1] Ernesto Quesada, La Epoca de Rosas, Buenos Aires, 1898.
[2] Epoca de Rosas, p. 346 *et seq.*

that Alsina was unalterably opposed to his policy, and this fact led him to take the first step toward assuming part of the power which he had delegated. On April 5, 1852, the governors of Buenos Aires, Corrientes, and Santa Fé met with General Urquiza on the outskirts of the city of Buenos Aires [1] and adopted a series of resolutions which accomplished two important purposes. The first was the adoption of a protocol which made the interprovincial treaty of 1831, known as the "Pacta de la Liga Litoral," the basis upon which the reorganization of the national government should be effected. The second was to take the conduct of foreign affairs from the government of Buenos Aires and place it in the hands of General Urquiza. On the following day, April 6, 1852, General Urquiza made use of this power by appointing the former minister of foreign affairs special envoy to Brazil and making the then minister of public instruction of the province of Buenos Aires, Dr. Vicente Fidel Lopez, his provisional minister of foreign affairs.

Two days later, April 8, 1852, the invitation was sent to the several governors of the provinces to meet in San Nicolas de los Arroyos to hold a preliminary conference not later than May 20, as General Urquiza was anxious to have the formal conference open on May 25, the anniversary of the beginning of the movement for national independence. This conference was expected to take the preliminary steps toward the framing of a national constitution. It is a matter worthy of note that with the exception of the governor of Buenos Aires, who was elected at a special election ordered by General Urquiza, all the provincial governors to whom invitations were sent had supported the dictatorship of Rosas and were in fact his appointees.

At the conference of San Nicolas, General Urquiza represented the provinces of Entre Rios and Catamarca. The provinces of Corrientes, San Luis, San Juan, Tucumán, Mendoza, Santiago del Estero, Rioja, Santa Fé, and Buenos Aires were represented by their respective governors. But three provinces failed to appear — Salta, Jujuy, and Córdoba. These three provinces ratified the agreement July 1, 1852. Within less than ten days after assembling, the governors of the provinces represented agreed upon certain fundamental principles for the constitutional reorganization of the country.[2]

This instrument consists of nineteen articles, which may be summarized as follows:

1. The pact of January 4, 1831, is recognized as the basis for constitutional reorganization.

2. Domestic order having been reëstablished the time has arrived to fulfill the provisions of Article XVI of said pact, viz., to call a constitutional convention to organize a federal system of government.

[1] Palermo. Now incorporated into the city limits.

[2] Known as the Acuerdo de San Nicolas. See Registro Nacional, Vol. II, p. 279.

3. All imposts or duties on interprovincial commerce are abolished.

4. The constitutional convention to convene in August 1852; the delegates being elected in the same manner as members of the provincial legislatures.

5. Each province is entitled to two delegates.

6. A majority vote is sufficient for the adoption of the constitution.

7. The governors of the respective provinces bind themselves to use every lawful influence to secure the election of men imbued with national sentiment, patriotism, and probity.

8. Establishes the immunity of delegates, but gives to each province the right to withdraw its delegates; requiring, however, the immediate appointment of their substitutes.

9. Provides for the method of paying the per diem of delegates.

10. Provides for the method of paying the other expenses of the convention.

11. Santa Fé is designated as the meeting place of the convention.

12. The constitution once adopted is to be sent to the provisional executive, who shall proclaim the same, together with such organic laws as may be necessary for its execution. The convention shall then elect the first constitutional president of the republic and adjourn.

13. Pending the adoption of the new constitution the provincial governors shall give special attention to the maintenance of order in their respective provinces.

14. In case of domestic violence the minister of foreign affairs [1] is empowered to take such measures as he may deem necessary to restore order.

15. That, pending the adoption of the new constitution, the land and naval forces of the provinces be placed at the disposal of General Urquiza, who, during this period, is to represent the national sovereignty and act as director of foreign affairs.

16. That said director of foreign affairs be empowered to regulate the navigation of rivers, the establishment of post-offices, and the improvement of highways.

17. That the provisional executive be empowered to form a council of state to assist him in the management of public affairs.

18. That the said director of foreign relations receive the title "provisional director of the Argentine Confederation."

19. That until the establishment of a system of national duties, imposts and excises the respective provinces contribute to the national treasury in proportion to the income from the foreign customs dues which they have established.

As soon as the terms of the agreement became known the hostile movement in the province of Buenos Aires began to take definite shape. The articles which aroused the greatest opposition were those giving to the provisional director [1] of the confederation the power to dispose of the land and naval forces and to suppress domestic violence in any of the provinces. The cry was raised that the way was being prepared for a new dictatorship. Although the contents of the famous agreement were known to the members of the provincial legislature of Buenos Aires, the instrument was not officially

[1] Technically known as the "Encargado de las Relaciones Exteriores," who was in reality the provisional executive. General Urquiza occupied this position.

submitted for their consideration until June 14 (1852). On the 21st the memorable debate [1] took place which resulted in the rejection of the agreement and marks the beginning of a new revolutionary movement which resulted in the separation of Buenos Aires from the confederation. The following day, Dr. Lopez, the governor of Buenos Aires, presented his resignation, which was accepted. The president of the legislative assembly was immediately intrusted with the executive direction of the affairs of the province.

As soon as General Urquiza was informed of these proceedings he sent a communication to the acting governor informing him that he regarded the proceedings of the assembly as anarchical and subversive of order and that in view of these circumstances he had decided to dissolve the assembly and to assume temporarily the government of the province. Deeming it necessary to assist in the preparations for the national constitutional convention which was soon to meet in Santa Fé, he delegated the power thus assumed to General Galan.[2] The departure of General Urquiza for Santa Fé was the signal for the beginning of a series of conspiracies which finally took shape in the revolution of September 11, 1852. After a brief struggle with the forces of the confederation, the conflict resulted in the establishment of Buenos Aires as an independent state, which adopted a new constitution in 1854.

[1] In this classic debate the most notable speeches were delivered by Colonel (afterwards President) Mitré, Dr. Velez, and Dr. Vicente Fidel Lopez.

[2] Decree of September 11, 1852.

CHAPTER V.

CONSTITUTION OF 1853 AND AMENDMENTS OF 1860, 1866, AND 1898.

Situation created by refusal of Buenos Aires to take part in the national constitutional convention. Conflict between Buenos Aires and the other provinces. Difficulties of the situation. Clearly defined work of the convention. Alberdi draft submitted to the committee on constitutional affairs. Report of the "committee on constitutional affairs." Signing of the constitution. Rejection by the province of Buenos Aires. Struggle between Buenos Aires and the confederation. Treaty of November 11, 1859, and pact of union of June 6, 1860. Constitutional convention of the province of Buenos Aires of 1860. Amendments proposed. National constitutional convention of 1860 (September 14–25). Conflict between Buenos Aires and the confederation. Amendments of 1866. Amendments of 1898.

The constitutional convention which assembled in the city of Santa Fé on November 20, 1852, met under the most unfavorable circumstances. It is true that every province with the exception of Buenos Aires was represented, but it is important to bear in mind what the absence of this province signified. The prospect of forming a vigorous federation without Buenos Aires was not encouraging. With less than one-third of the population and about one-fourth of the wealth of the country, the thirteen provinces were certain to cut a rather sorry figure in their isolation. The most serious factor in the situation was the fact that the central government of the confederation had always depended upon the customs dues for its support. As the city of Buenos Aires was practically the only port of entry, the central government would be deprived of its most important means of support. The system of provincial taxation was so defective that it yielded but an insignificant revenue. No attempt at direct federal taxation had ever been made. In 1852 the revenues from customs dues amounted to $4,000,000 gold, which would have been ample to support the central government, but which was diverted into the treasury of the province of Buenos Aires.

It is no wonder, therefore, that the enthusiasm which marked the first announcement of the calling of a national constitutional convention should have cooled somewhat by the time the delegates met in November 1852. In fact, had the revolution in Buenos Aires broken out a few months earlier it is doubtful whether General Urquiza could have secured the attendance of delegates from all the provinces.[1] It was evident that the absence of Buenos Aires meant the beginning of a

[1] Mariano A. Pelliza, Historia de la Organizacion Nacional, Buenos Aires, 1897, pp. 73 *ff.*

struggle between the provinces and this indispensable portion of the confederation. The delegates all realized that without the province of Buenos Aires a vigorous national organization was impossible. There was general agreement that this province had to come into the confederation, willingly, if possible — by force, if necessary. General Urquiza, in his opening address,[1] expressed the opinion of the delegates when he said:

"The absence of Buenos Aires does not mean permanent separation, it is more in the nature of a passing accident. Geographical conditions, historical traditions, and a series of treaties and agreements bind Buenos Aires to the nation. She can no more continue indefinitely without her sister provinces than her sister provinces without her. In the Argentine flag there is room for more than fourteen stars, but it is not possible to eliminate any one of these."

It is not surprising, therefore, that in the minds of some of the delegates there was considerable misgiving as to the ultimate success of the undertaking upon which they had embarked. In fact, these misgivings took definite shape in the form of a motion presented by Dr. Facundo Zuviría, the presiding officer, on April 19, 1853, to postpone the adoption of a constitution. In a long speech delivered the following day he maintained that no attempt should be made to adopt a new constitution until the country had been pacified and real unity attained. Although this view received but little support, the somewhat bitter replies made to the president's speech indicate that the delegates were deeply impressed with the unfavorable conditions under which the assembly had met. In some respects the work of the convention of 1852 was more clearly defined than that of any previous Argentine constitutional assembly. Most of the previous assemblies met without definite program and without clearly defined powers. The result was that in many instances they assumed extensive legislative powers and at times failed to fulfill the main purpose for which they had been called. For the convention of 1852 the program was prescribed by the agreement of San Nicolás. Not only was the convention directed to adhere to the federal principle in organizing the national government, but it was also required to establish freedom of domestic commerce, to provide adequate national revenues, and to assure the payment of the public debt.

Although the convention met on November 20, 1852, the draft of the constitution was not submitted by the committee on constitutional affairs until April 18, 1853. The material submitted to the committee as a basis for its labors was extremely meager. It is true that the agreement of San Nicolás declared the interprovincial treaty of January 4, 1831, to be the fundamental law of the Republic,

[1] Owing to the revolution in Buenos Aires he was unable to be present personally, but his address was read to the convention.

but this treaty, while recognizing the federal system, did not contain the elements of a national constitution.

It was reported by one of the delegates that during the preliminary sessions of the convention considerable use was made of the "Federalist," but it is certain that the document which played the most important part in determining the views of the delegates was the draft of a federal constitution submitted by Juan Bautista Alberdi, who had migrated from the Argentine Republic during the dictatorship of Rosas and who was living in Chile at the time. It is evident, however, that the members of the committee on constitutional affairs were acquainted with the constitution of the United States. A comparison of Alberdi's draft with that submitted by the special committee to the convention shows that the committee made liberal use of the provisions of the constitution of the United States. In fact, the chairman of the committee, in submitting the constitution to the convention, said: "The draft of the committee has been cast in the mold of the constitution of the United States, the only model now existing for a real federation." [1]

The report of the committee intrusted with the drafting of a constitution [2] was submitted to the convention on April 18, 1853.[3] The document is brief and contains the merest outline of the system of government proposed. In addition to the project of a constitution the committee submitted drafts of two laws: one for the organization of the financial system of the confederation and the other for the nationalization of the city of Buenos Aires and its establishment as the national capital, in conformity with article 3 of the constitution. On May 1, 1853, the constitution was signed by the delegates of the provinces represented and on May 25 General Urquiza, provisional director of the Argentine confederation, proclaimed the constitution the supreme law of the land. In August 1853,[4] General Urquiza ordered the holding of elections for president and vice-president. He was elected president and Dr. del Carril vice-president. The city of Paraná (province of Entre Ríos) was declared the temporary capital of the confederation [5] until the settlement of the pending differences with the province of Buenos Aires.

The grave question which now presented itself was the relation of the province of Buenos Aires to the federation. Article VII of the law designating Buenos Aires as the national capital provided that a special committee of the convention should submit the constitution to the authorities of the province with a view to securing

[1] Proceedings of the Constitutional Convention, Session April 20, 1853. See volume entitled "Convencion Nacional," p. 270.

[2] Comision de Negocios Constitucionales.

[3] See volume on Convencion Nacional de 1898 containing proceedings of convention of 1852–53, p. 264.

[4] Decree of August 29, 1853.

[5] Law of December 18, 1853.

its acceptance. Both the national constitution and the law creating the federal district of Buenos Aires were promptly rejected by the legislature of the province. A long struggle between the federation and the province now follows. General Urquiza, the president of the federation, saw clearly that every effort would have to be directed toward bringing the province of Buenos Aires into the union. Under the then existing conditions, with the city of Buenos Aires the only port of entry, the other provinces were compelled to pay tribute to Buenos Aires. All goods imported from Europe first paid customs dues in Buenos Aires. The independence of this important province was, therefore, a real burden to the other provinces. In order to lighten this burden and at the same time bring pressure to bear on the people and government of Buenos Aires, a system of differential duties was inaugurated in 1856. Under this plan prohibitory duties were placed upon imports which did not come directly from foreign ports. This measure served to increase the enmity between Buenos Aires and the federation. The fact that these differential duties did not bring about the results anticipated strengthened the belief of the leaders of the confederation that if Buenos Aires could not be induced to come into the union willingly she would have to be forced to do so. A number of attempts to bring about a *modus vivendi* failed. The most notable of these was undertaken by the American chargé d'affaires, Colonel Yancey, in 1858, but failed because of the conditions attached by the government of the province.[1]

In October 1859 the conflict between the federal and provincial forces culminated in actual warfare. The first action at Cepeda resulted in a victory for the federal forces. General Urquiza followed up this advantage by a rapid march toward the city of Buenos Aires. Thus invaded and threatened with the capture of the capital, the government of Buenos Aires was prepared to compromise. On November 10 a treaty of peace was signed, ratified on the following day (November 11), and supplemented by a further agreement of June 6, 1860. This treaty provided:

> *First.* The province of Buenos Aires to enter the federation.
> *Second.* A provincial constitutional convention to be called for the purpose of examining the national constitution of 1853. If the convention adopts the constitution without amendment the province of Buenos Aires shall accept the same without delay.
> *Third.* In case the provincial convention proposes amendments, a national constitutional convention *ad hoc* shall be called.

The constitutional convention of the province of Buenos Aires assembled on January 5, 1860. More than a month was lost in the discussion of credentials of delegates. The question of accepting the

[1] These conditions were: (*a*) That the city of Buenos Aires should not be the federal capital; (*b*) That General Urquiza should retire and occupy no public office under the confederation.

national constitution without amendment was put to vote and negatived. A special committee was then appointed to examine the national constitution and to propose amendments. This committee began its labors on April 6, 1860, and remained in session until May 3, when its report was submitted to the convention.[1] In the amendments proposed by the committee the influence of the constitution of the United States is everywhere apparent. The chairman of the committee, Dr. Dalmacio Velez-Sarsfield, in presenting the report, said:

"The constitution (of the United States of America) has in seventy years assured the progress of an immense continent. The framers of the Argentine constitution adopted it as a model in framing the constitution which we are now examining. They did not, however, respect its sacred text, but in their ignorance and with the idea of improving upon it, suppressed certain portions and altered others. Your committee has done nothing more than incorporate into the Argentine system those portions of the constitution of the United States which the framers of the constitution of 1853 had altered to the detriment of their political system."

The amendments proposed by the committee were made the subject of prolonged discussion, but were finally adopted by the convention on May 12, 1860.

In accordance with the provisions of the treaty of November 11, 1859, and the agreement of June 6, 1860, the amendments proposed by the convention of Buenos Aires were to be submitted to a national constitutional convention called for this purpose. In accordance with this arrangement the national convention met in the city of Santa Fé September 14, 1860. On September 23 the special committee appointed to examine the amendments proposed by the Buenos Aires convention presented its report recommending the acceptance of the proposed amendments with a few verbal but unimportant changes. The convention adjourned September 25, after adopting the amendments as proposed by the committee. The amendments incorporated into the constitution may be classified as follows:[2]

First. Appendix B gives article 3 as follows:

> "The authorities exercising the functions of the federal government shall reside in the city which shall be declared by special act of Congress to be the capital of the republic, a previous cession of the territory which shall become federal being made by one or more of the provincial legislatures."

Second. Article 4 of the constitution gave to the federal government the power to levy export duties. The Buenos Aires convention proposed

[1] Diario de Sesiones de la Convencion del Estado de Buenos Aires, encargada del examen de la Constitucion Federal y Anexas, 1860. See especially speech of Dr. Velez-Sarsfield in presenting the report of the commission.

[2] Proceedings of National Convention of 1860, in an official publication entitled "Convencion Nacional de 1898," pp. 640–642, in which the proceedings of the conventions of 1860 and 1866 are reprinted. Also Del Valle, Derecho Constitucional, p. 507 *ff.*

that all export duties should cease in 1866.[1] It is evident that Buenos Aires as the only exporting province felt the burden of this form of taxation and was anxious, therefore, to take this power from the federal government. The acceptance of this amendment made article 4 read as follows:

> "The federal government shall defray the expenses of the nation with the funds of the national treasury, consisting of: receipts from import and export duties; *duties to be levied until 1866 on the exports of domestic merchandise as provided in paragraph No. 1 of article 67 of the present constitution;*[2] proceeds of the sale or lease of national lands; revenues of the postal service; taxes levied by the general congress equitably and in proportion to the population; and moneys obtained through loans and financial operations decreed by said congress for national urgencies, or for works of national utility."

Third. Article 5 of the constitution, of 1853 provided for free schools up to the grade of high schools.[3] Owing to the limited resources of many of the provinces, the obligation to establish free schools was eliminated. This article also provided that the constitutions framed by the several provinces should be submitted to the national congress for approval before taking effect. The province of Buenos Aires had adopted a constitution in 1854 and, the provincial convention being opposed to the submission of this constitution to the congress, proposed the suppression of this requirement. Article 5 as amended reads:

> "Each province shall adopt its own constitution, which shall provide for the administration of justice in its own territory, its municipal system, and primary instruction, such constitution to be framed upon the republican representative plan, in harmony with the principles, declarations, and guaranties of the national constitution. Upon these conditions, the federal government shall guarantee to each province the enjoyment and exercise of its institutions."

Fourth. Article 6 of the constitution of 1853 gave to the federal government the power to intervene in the government of a province upon the request of the legislature or governor or without such request for the purpose of suppressing domestic violence, of preserving the safety of the nation or repelling foreign invasion. The amendment as proposed and accepted brings the article closer to article IV, section 4, of the constitution of the United States by providing that the federal government shall intervene in the government of the provinces to guarantee a republican form of government and to repel foreign invasion. When, however, domestic violence or the invasion of another province either threatens the constituted authorities or has deposed them, the federal government may intervene only upon the request of such provincial authorities. In making this distinction it is evident that the province of Buenos Aires wished to guard against the usurpation of provincial authority by the federal government. The article as finally accepted reads as follows:

> " The federal government shall have the right to intervene in the territory of the provinces in order to guarantee the republican form of gov-

[1] When the time arrived for the taking of effect of this amendment the country was at war with Paraguay. As this source of income could not be dispensed with, a constitutional convention convened in Santa Fé restored the original wording.

[2] The words printed in *italics* were ordered to be stricken out by the national convention held at Santa Fé on September 12, 1866.

[3] "Educacion Primaria," in the Argentine system, includes the graded schools up to the "Colegio Nacional" or high school.

ernment, or to repel foreign invasion; and, when requested by the constituted authorities to maintain them in power, or to re-establish them if they shall have been deposed by sedition or by invasion from another province."

Fifth. Article 12 of the constitution of 1853 provided that vessels bound from one province to another should not be compelled to enter, anchor, or pay duties on account of transit. The committee of the Buenos Aires convention, desiring to make forever impossible the system of differential duties which the confederation had inaugurated in 1856, added to this clause a provision similar to that of article I, section 9, paragraph 6, of the constitution of the United States, to wit:

"No preference shall be given by any law or commercial regulations to one port over another."

Article 12 as thus amended reads:

"Vessels bound from one province to another shall not be compelled to enter, cast anchor, or pay duties on account of transit, and in no case shall any preference be given to one port over another by means of commercial laws or regulations."

Sixth. Article 15 of the constitution of 1853 prohibited slavery. In order to make the prohibition all-inclusive, the Buenos Aires convention proposed the following addition, which was accepted by the national convention:

"Slaves introduced in any way whatsoever into the country shall become free by the mere act of setting foot upon the territory of the republic."

(*a*) The article as amended reads:

"There shall be no slaves in the Argentine nation. Those few now existing therein shall become free as soon as this constitution becomes law. The indemnifications which may have to be paid in consequence of this declaration shall be regulated by a special law. Contracts involving the purchase or sale of persons shall be criminal acts, for which the contracting parties, as well as the notary or official before whom they are executed, shall be responsible. Slaves introduced in any way whatever into the country shall become free by the mere fact of entrance into the territory of the republic."

(*b*) Also a minor amendment to article 18 abolishing capital punishment by guillotine:

"No inhabitant of the nation shall be punished except after trial and conviction, under laws anterior to the commission of the offense; nor shall he be tried by special commissions, or removed from the jurisdiction of the courts, which, under the laws in force at the time when the offense was committed, should take cognizance of his case. No one shall be compelled to testify against himself; nor shall anyone be arrested except by virtue of a written order of the proper authority. The defense of persons and of rights before the courts shall be inviolable. Domicile as well as epistolary correspondence and private papers shall be inviolable; but a law shall determine in what cases and under what circumstances the former may be entered, and the latter seized. The penalty of death for political offenses, torture of all kinds, and whipping are abolished. The national jails shall be healthful and clean, intended for the safe-keeping and not for the punishment of the offenders de-

tained therein, and any measure which, under color of precaution, tends to inflict upon the prisoners more hardships than those required for their security shall cause the judge authorizing it to be held responsible."

Seventh. Article 30 of the constitution of 1853 provided that the constitution could only be amended ten years after its acceptance. The convention of Buenos Aires proposed the elimination of this limitation, which was accepted by the national convention. As amended, article 30 reads:

"The constitution may be amended either wholly or in part. The necessity for such amendment shall be declared by Congress, by a vote of at least two-thirds of its members; but the amendment itself shall not be made except by a convention called for that purpose."

Eighth. Article 31 of the constitution of 1853 established the supremacy of the constitution, the laws made in pursuance thereof, and the treaties with foreign powers in the same form as article VI, paragraph 2, of the constitution of the United States. The convention of Buenos Aires, desiring to preserve the provisions of the pact of union of June 6, 1860, proposed the following addition, which was accepted by the national convention:

"This rule is not applicable to the province of Buenos Aires, in so far as the treaties ratified after the compact of the 11th of November 1859, are concerned."

Article 31 as thus amended reads:

"This constitution, the national laws which may be enacted by congress in pursuance thereof, and treaties with foreign powers shall be the supreme law of the nation; and the authorities of each province shall be bound to abide by them, any provision in their own provincial constitutions or laws to the contrary notwithstanding. This rule shall not be applicable to the province of Buenos Aires, in so far as the treaties ratified after the compact of the 11th of November, 1859, are concerned."

Ninth. The convention of Buenos Aires proposed that after article 31 of the constitution of 1853 four important additions be made, which constitute articles 32, 33, 34, and 35 of the constitution at present in force. These articles are intended (*a*) to protect the liberty of the press and to prevent the extension of federal jurisdiction over this subject:

"The federal congress shall not pass any law restricting the liberty of the press, or subjecting it to federal jurisdiction."

(*b*) To establish the inviolability of certain rights not enumerated in the constitution, following the example of the ninth amendment to the constitution of the United States:

"The declarations, rights, and guaranties enumerated in the constitution shall not be construed as involving the denial of any other rights and guaranties, not enumerated, but naturally derived from the principles of the sovereignty of the people and of the republican form of government."

(*c*) Establishing incompatibility between the exercise of federal and provincial judicial functions:

"The judges of the federal courts shall not at the same time be judges in the provincial courts. Neither shall a position in the federal service, whether civil or military, confer upon the official who holds it the rights

of residence in the province wherein it is held, and which may not be his habitual abode, this provision applying to their being chosen to positions in the province in which they may accidentally happen to be."

(*d*) Providing that the term "The Argentine Nation" should be used in the enactive clause of all laws:

"The names of 'The United Provinces of the Rio de la Plata' 'The Argentine Republic,' 'The Argentine Confederation,' adopted in succession since 1810, may in future be used indiscriminately as the official designation of the government and the territory of the provinces; but the name of 'The Argentine Nation' shall be used in the enactment and approval of the laws."

Tenth. Article 34 of the constitution of 1853 (present article 38), in providing for the number of representatives in the lower house of the national congress, had given to the prospective capital city — Buenos Aires — six representatives. The convention of the province which was opposed to the federalization of the city proposed and secured the acceptance of an amendment eliminating mention of special representation for the city of Buenos Aires and providing for twelve representatives from the province:

"The deputies to the first congress shall be elected in the following proportion: For the province of Buenos Aires, twelve; for the province of Córdoba, six; for the province of Catamarca, three; for the province of Corrientes, four; for the province of Entre-Ríos, two; for the province of Jujuy, two; for the province of Mendoza, three; for the province of La Rioja, two; for the province of Salta, three; for the province of Santiago, four; for the province of San Juan, two; for the province of Santa Fé, two; for the province of San Luis, two; for the province of Tucumán, three."

Eleventh. Article 36 of the constitution of 1853 (present article 40), in determining the qualifications for members of the chamber of deputies, simply prescribed an age requirement of twenty-five years and the enjoyment of citizenship for a period of four years. This gave rise to great abuses. The difficulties of travel and the small and uncertain pay of members of the house made it comparatively easy to institute a system by which the representation of distant provinces was undertaken by residents of or near the city of Paraná, the meeting-place of the national congress. The grave defect of this plan was that it enabled a few leaders to name the representatives of the more distant provinces and thus practically to control the congress. To remedy this abuse the provincial convention proposed that, in addition to the qualifications prescribed, members of the chamber of deputies should either be native-born citizens of the provinces they represent or resident therein for the two years preceding their election:

"No person shall be elected a deputy who has not attained the age of twenty-five, who has not been a citizen for four years, and who is not a native of the province electing him or a resident thereof for the two preceding years."

Twelfth. Article 41 of the constitution of 1853 (present article 45) provided for the impeachment of the provincial governors as well as the president and federal judges; charges to be preferred by the chamber of deputies and to be tried before the national senate. In the provincial convention there was a strong feeling that this gave to the federal government too great a power over the provinces, and an amendment was, therefore,

proposed, excluding provincial governors from impeachment by the federal authorities:

> "The house of deputies alone shall have the right to impeach before the senate, the president, the vice-president, the ministers of the executive power, the justices of the supreme court, and the judges of the other inferior tribunals of the nation for malfeasance or crime in the exercise of their functions, or for ordinary offenses. Impeachment of such person shall be made after investigation, and a resolution that a trial is in order passed by a vote of two-thirds of the deputies present."

Thirteenth. Article 43 of the constitution of 1853 (present article 47) was amended by adding the same requirement for senators as for deputies, viz., they must be either native-born citizens of the province they represent or have resided therein two years prior to their election:

> "The following qualifications shall be necessary for election as senator: the attainment of the age of thirty; citizenship in the nation for six years; the enjoyment of an annual income of two thousand pesos in coin, or an equivalent amount of capital; and nativity in the province which elects him or residence therein for the two years immediately preceding."

Fourteenth. Article 51 of the constitution of 1853 provided that all amendments to the constitution should originate in the senate. The elimination of this provision was proposed by the provincial convention and accepted, thus leaving the procedure of amendments as provided by article 30:

> "The constitution may be amended either wholly or in part. The necessity for such amendment shall be declared by congress, by a vote of at least two-thirds of its members; but the amendment itself shall not be made except by a convention called for that purpose."

Fifteenth. To article 64 of the constitution of 1853 (present article 67) four amendments were proposed and accepted:

(*a*) Requiring uniformity of customs dues throughout the territory of the republic:

> "To legislate in regard to custom-houses and to establish import duties, which, as well as the rates of appraisement on which they must be based, shall be uniform throughout the nation; it being thoroughly understood, however, that these duties and all other taxes of a national character are payable in the currency of the respective provinces in their exact equivalent value. And, likewise to establish export duties *up to 1866, at which time they shall cease to be either national or provincial taxes.*" [1]

(*b*) Prohibiting the federal government from suppressing the custom-houses existing in any province at the time of its incorporation into the union:

> "To regulate the free navigation of the rivers in the interior, to declare as ports of entry those which may be deemed fit for that purpose, and to establish or abolish custom-houses. But the custom-houses for foreign commerce, existing in each province at the time of its coming into the national union, shall not be abolished."

(*c*) Reserving to the provinces the enforcement of the national codes and prescribing the determination of citizenship by place of birth:

[1] Words in *italics* stricken out September 12, 1866.

"To enact civil, commercial, penal, and mining codes without encroaching upon the local jurisdictions, the provisions of such codes to be enforced either by the federal or provincial courts according as the matters or persons may fall under their respective jurisdictions. And especially to enact general laws on naturalization and citizenship, for the whole nation, based upon the principle of citizenship by nativity, as well as laws on bankruptcy, counterfeiting of money and forging of public documents of the state and on the establishment of trial by jury."

(*d*) Taking from the congress the power to examine the provincial constitutions and to reject such as are not in harmony with the national constitution.

Sixteenth. Amendment to article 83 of the constitution of 1853 (article 86, clause 22, of the present constitution), limiting the powers of the president during recess of congress as follows:

"The President shall have the power to fill those vacancies which require the consent of the Senate, and which occur during a recess, by means of appointments which shall expire at the close of the next session."

Seventeenth. Article 86 of the constitution of 1853 (article 89 of the present constitution) gave to the members of the president's cabinet wide powers of promulgating decrees with the approval of the president. The abolition of this power was suggested by the convention of Buenos Aires and approved by the national convention:

"The ministers shall not, in any case, take individual action on any subject, unless it concerns only the internal government of their respective departments."

Eighteenth. Article 91 of the constitution of 1853 (article 94 of present constitution) was amended in minor particulars by leaving to the congress the determination of the number of justices and the details of judicial organization:

"The judicial power of the nation shall be vested in a supreme court of justice and in such other inferior courts as congress may establish in the national territory."

Nineteenth. Article 97 of the constitution of 1853 (present article 100) gave to the federal judiciary the power to settle conflicts between the constituted authorities of a province. This power the convention of Buenos Aires proposed to abolish — an amendment accepted by the national convention. With a few additional but unimportant changes this article was made to read as follows:

"The Supreme Court and the inferior courts of the nation shall try and decide all cases, not enumerated in clause 11 of Art. 67, which arise under the provisions of this constitution, the laws of the nation, or treaties with foreign powers; in cases concerning ambassadors, public ministers, and foreign consuls; in cases of admiralty and maritime jurisdiction; in controversies to which the nation is a party; in cases which arise between two or more provinces, between citizens of different provinces, and between a province or its citizens and a foreign state or its citizens."

Twentieth. In order to bring article 101 of the constitution of 1853 (article 104 of present constitution) into harmony with the amendment to article 31, the provincial convention proposed to this article a reservation

with reference to the existence of special agreements at the time of entering the union:

> "The provinces retain all powers not delegated by the present constitution to the federal government, and those which they may have expressly reserved by special agreements at the time of their coming into the union."

Twenty-first. In order to bring article 103 of the constitution of 1853 (article 106 of present constitution) into harmony with the amendment to article 5 it was proposed to eliminate from this article the requirement that provincial constitutions be first submitted to the national congress:

> "Each province shall enact its own constitution, in accordance with the provisions of article 5."

The acceptance by the national constitutional convention of the amendments proposed by the convention of the province of Buenos Aires, while settling the pending constitutional questions, made prominent the precarious position of the federal government and the personal antagonisms between the provincial and federal leaders. The lack of financial resources of the federal government made it apparent that it could not be maintained unless assured of the customs dues collected at the port of Buenos Aires. Although the province of Buenos Aires was willing to accept the constitution as amended, the leaders were determined to control federal policy. It was evident that a conflict between Buenos Aires and the federal government was inevitable. A pretext was not difficult to find and was readily forthcoming in a difference of opinion as to the requirements of articles 37 and 41 of the constitution. Article 37 provided that for the purpose of electing members of the chamber of deputies, "the provinces and the capital shall be considered as electoral districts of a unitary state." Article 41 provided that for the first election the legislatures of the respective provinces should determine the manner of electing deputies. The legislature of Buenos Aires interpreted this to mean that the provincial election law of July 17, 1860, which had served for the election of the members of the provincial constitutional convention, might remain in force and by act of October 31, 1860, so decreed.

When the twelve deputies thus elected presented themselves they were refused admission and the congress immediately ordered the holding of new elections for deputies. The province of Buenos Aires interpreted this action as an affront and immediately began active preparations for war. The next step taken by the congress was to pass a law (July 5, 1861) declaring that the province of Buenos Aires had violated the compacts of November 11, 1859, and June 6, 1860. Her action was declared tantamount to sedition and the national government was authorized to intervene in the affairs of the province, to reëstablish order, and to maintain the supremacy of the constitution. Buenos Aires was placed under martial law and

communication with the provincial government was prohibited. The federal government lacked the power necessary to give effect to these measures, as the provincial government was not only prepared to offer resistance, but was actually preparing to take the offensive. At this juncture France, England, and Peru offered their friendly mediation, but all efforts at adjustment failed.

The conflict was brief and decisive and resulted in the victory of the provincial forces under General Mitré at the battle of Pavon, October 17, 1861. This defeat marks the downfall of the national government. President Derqui fled to Montevideo and on December 12, 1861, the congress declared the national executive power suspended until a new national assembly could be convened. General Mitré, governor of Buenos Aires, was given the power to call such an assembly and also was intrusted with the national executive authority until the contemplated reorganization of the national government was effected. In fulfillment of the duty imposed upon him, General Mitré, by decree of March 15, 1862, ordered the election of senators and deputies to the national congress.

The elections were held in April and the new congress solemnly opened on May 25, 1862. The two important questions to be settled were: (1) to place the federal finances on a sound basis, and (2) to determine the seat of government. The provision of the constitution making the customs dues national rather than provincial gave to the national government an assured income. On the other hand, the question of the seat of the national government presented grave difficulties. Article 3 of the constitution required the assent of the provincial legislature for the federalization of any portion of a province as the national capital. General Mitré proposed the federalization of the entire province of Buenos Aires, which was voted by the congress by act of August 20, 1862, but rejected by the provincial legislature. The most that he secured from the local legislature was the residence of the national authorities in and with jurisdiction over the city of Buenos Aires for a period of five years, after which period the matter should be taken up for final settlement.

The election for president of the republic which took place in October 1862 resulted in the choice of General Mitré. His personal influence, together with the overshadowing importance of the nation's foreign affairs, especially the war with Paraguay, obscured for a time the feeling of rivalry between Buenos Aires and the provinces. In 1866, owing largely to the heavy expenditures incident to the war with Paraguay, it was found necessary to propose an amendment in order to maintain export taxes as a source of national revenue. Article 4 of the constitution provided that export duties on domestic merchandise could only be levied until 1866. Article 67 provided that in 1866, all export taxes for national purposes should cease,

and, furthermore, that no such taxes should ever be established by the provinces. Owing to the pressing financial needs of the national government the congress proposed the abolition of this restriction and provided for the calling of a national constitutional convention in the city of Santa Fé, which adopted amendments to articles 4 and 67, thus enabling the federal government to maintain the export taxes. The act was as follows:

"The national convention enacts the following:

"First: That part of article 4 of the national constitution which reads: 'Until 1866, in conformity with the enactments of article 67, clause I,' shall be stricken out, the said article to read as follows:

> "The federal government shall defray the expenses of the nation with funds of the national treasury, consisting of receipts from import and export duties; proceeds of the sale or lease of national lands; revenue of the postal service; taxes levied by the general congress equitably and in proportion to the population, and moneys obtained through loans and financial operations decreed by congress for urgent national needs or for works of national utility.

"Second. The last part of clause 1, article 67, which reads: 'Up to 1866, at which time they shall cease to be either national or provincial taxes,' shall be stricken out, so as to make said clause read as follows: (1) To legislate in regard to custom-houses and to establish import duties which, as well as the rates of appraisement on which they are based, shall be uniform throughout the nation; it being thoroughly understood, however, that these duties and all other taxes of a national character are payable in the currency of the respective provinces in their exact equivalent value. And likewise to establish export duties."

In 1898 a further revision [1] of the constitution was undertaken, (1) for the purpose of so amending article 37 as to raise the basis of representation for members of the chamber of deputies from 20,000 to 33,000 inhabitants; also to require the congress to revise the basis of representation after every census; (2) amending article 87 by increasing the number of members of the president's cabinet from five to eight.

[1] "The national convention assembled in the capital of the republic, in pursuance of law No. 3507 of September 3, 1867, sanctions:

"First. Articles 37 and 87 of the national constitution are hereby amended as follows:

"ART. 37. The chamber of deputies shall consist of representatives elected directly and by simple plurality of votes, by the people of the provinces and of the capital, which shall be considered for this purpose as mere electoral districts of a single state. The election shall be in the proportion of one deputy for each thirty-three thousand inhabitants or fraction thereof of not less than sixteen thousand five hundred. After the taking of each census congress shall fix, according to its results, the rate of representation, which in no case shall be less than that now established.

"ART. 87. Eight ministers or secretaries shall have charge of the affairs of the nation, and shall countersign and attest all acts of the president, which without this requisite shall lack validity. A special law shall determine the business of each department."

CHAPTER VI.

DIVISION OF FUNCTIONS BETWEEN THE FEDERAL GOVERNMENT AND PROVINCES. ENCROACHMENTS OF FEDERAL AUTHORITY. CONSTITUTIONAL POSITION OF THE PROVINCES.

Comparison between Constitution of Argentina and Constitution of the United States. Civil and penal legislation. Public education. Industry and commerce. Historical development of provinces. Constitutional Convention of 1852. Struggle between the federation and the province of Buenos Aires.

In examining the division of powers between the federal and the provincial governments, it is important to bear in mind that the strictly constitutional line of division, as contained in the fundamental law, does not give an accurate idea of the actual range of federal functions. As we shall have occasion to see, the limited resources of the provinces have compelled the central government to adopt a most liberal interpretation of federal powers, so liberal in fact as to supplant in some cases not only the provincial governments in their most important functions, but actually to undertake strictly municipal functions, such as the construction of drainage systems in cities, local water supply, and other sanitary works.

The line of division between federal and provincial powers can best be understood after an examination of article 67 of the constitution, which contains an enumeration of the powers of congress:

ARTICLE 67.

1. To legislate in regard to custom-houses and to establish import duties, which, as well as the rates of appraisement on which they must be based, shall be uniform throughout the nation; it being thoroughly understood, however, that these duties and all other taxes of a national character, are payable in the currency of the respective provinces in their exact equivalent value. And likewise to establish export duties *up to 1866, at which time they shall cease to be either national or provincial taxes.*[1]

2. To levy direct taxes for a definite period of time and in a manner proportionately equal throughout the territory of the nation, whenever the defense of the country, the common safety, or the public good may require it.

3. To borrow money, on the credit of the nation.

4. To provide for the use and disposition of the national lands.

5. To establish and organize at the capital a national bank, with branches in the provinces, with power to issue bank notes.

6. To make arrangements for the payment of the national debt, both foreign and domestic.

7. To appropriate annually the money necessary to meet the expenses of the national government, and to approve or disapprove the accounts of its disbursement.

[1] Words in *italics* stricken out September 12, 1866.

8. To grant subsidies, to be paid out of the national treasury, to those provinces whose revenues, according to their budgets, are insufficient to meet their ordinary expenses.

9. To regulate the free navigation of the rivers in the interior, to declare as ports of entry those which may be deemed fit for that purpose, and to establish or abolish custom-houses; but the custom-houses for foreign commerce, existing in each province at the time of its coming into the national union, shall not be abolished.

10. To coin money, fix the value thereof and that of foreign coins, and to adopt a uniform system of weights and measures for the whole nation.

11. To enact civil, commercial, penal, and mining codes without encroaching upon the local jurisdictions, the provisions of such codes to be enforced, either by the federal or provincial courts, according as the matters or persons may fall under their respective jurisdictions; and especially to enact general laws on naturalization and citizenship for the whole nation, based upon the principle of citizenship by nativity; as well as laws on bankruptcy, counterfeiting of money, and forging of public documents of the State, and on the establishment of trial by jury.

12. To regulate commerce by land and sea with foreign countries and among the provinces.

13. To establish and regulate the post-offices and post-roads of the nation.

14. To settle finally the national boundaries, to fix those of the provinces, to create new provinces, and to provide by special laws for the organization, administration, and government of the national territories which may be left outside the limits assigned to the provinces.

15. To provide for the security of the frontiers and for the preservation of peaceful intercourse with the Indians, and to promote their conversion to Catholicism.

16. To provide for all that conduces to the prosperity of the country, to the advancement and welfare of all the provinces, and to the advancement of the enlightenment of the people, by prescribing plans for general and university instruction, and by promoting industrial enterprise, immigration, the construction of railways and navigable canals, the colonization of the public lands, the introduction and establishment of new industries, the importation of foreign capital, and the exploration of the interior rivers, by protective laws for these purposes, by concessions of privileges for a limited time, and by rewards which shall act as an encouragement.

17. To establish courts inferior to the supreme court of justice; to create and abolish offices, and to fix the duties of the same; to grant pensions, decree honors, and to grant general amnesties.

18. To accept, or refuse to accept, the reasons assigned for the resignation of the president or vice-president of the republic; to declare that the time has arrived to proceed to a new election, to count the returns thereof, and to ascertain the result.

19. To approve or reject treaties concluded with other nations and concordats entered into with the Apostolic See, and to make rules for the exercise of ecclesiastical patronage throughout the nation.

20. To admit into the territory of the nation religious orders in addition to those now existing.

21. To authorize the executive power to declare war or to make peace.

22. To grant letters of marque and of reprisal and to make rules concerning prizes.

23. To fix the strength of the land and naval forces in times of peace and of war, and to make rules and ordinances for the government of such forces.

24. To authorize the calling out of the militia of any or all the provinces whenever the execution of the laws of the nation, the suppression of insurrections, or the repelling of invasions may render it necessary. To provide for the organization, equipment, and discipline of such militia, and for the administration and government of the part thereof which may be employed in the service of the nation, leaving to the provinces the power to appoint the proper chiefs and officers of their respective militias, and to enforce in regard to them the discipline established by congress.

25. To permit the introduction of foreign troops into the territory of the nation, and the departure therefrom of national troops.

26. To proclaim a state of siege in one or more places in the nation in case of internal disorder, and to approve or suspend the state of siege declared during the recess of congress by the executive power.

27. To exercise exclusive legislative power throughout the territory of the national capital, and in all other places acquired by purchase or cession in any province for the construction of forts, arsenals, magazines, or other establishments of national utility.

28. To make all laws and regulations which shall be necessary for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the Argentine nation.

Notwithstanding the many points of similarity between this article and article I, section 8, of the constitution of the United States which is given below, the stronger emphasis of national power in the Argentine constitution is immediately apparent. This is readily explained by the peculiar political conditions upon which the Argentine federal system rests.[1]

The centralization of the Spanish colonial system developed a uniformity of institutional type which served as the foundation for the growth of a real unity of national sentiment. The problem confronting the founders of the Argentine Republic was, therefore, totally different from that with which our constitutional convention had to deal. In the United States, federation meant centralization, the attempt to overcome the defects of the loosely jointed confederation. In the Argentine, federation meant the decentralization of the Spanish system. The point of departure of the two systems was, therefore, essentially different, and this difference appears in the relations between the federal government and the provinces.[2]

Article I, section 8, of the United States constitution provides:

1. The congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

2. To borrow money on the credit of the United States.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

[1] See Chapters II and III.

[2] See pages 64–68.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. To establish post-offices and post-roads.

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries.

9. To constitute tribunals inferior to the supreme court.

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

13. To provide and maintain a navy.

14. To make rules for the government and regulation of the land and naval forces.

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state, in which the same shall be, for the erection of forts, magazines, arsenals, dry-docks, and other needful buildings.

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

In the division of functions established under the Argentine constitution certain matters are placed under the exclusive jurisdiction of the central government. These may be grouped as follows:[1]

First. The conduct of foreign relations, to declare war, to conclude peace, the formation of land and naval forces, and the issuance of letters of marque and reprisal. It was not until 1862 that the plan now in force was incorporated into the Argentine system. Prior to 1835 the administration of foreign affairs was vested in the governor of one of the provinces, usually Buenos Aires. From 1835 to 1851 this power was vested in Rosas, who had established a dictatorship. After his overthrow and until 1861 the conduct of foreign affairs was vested in the governor of the province of Entre-Ríos. With the final organization of national government in 1862, the administration of foreign affairs came within the exclusive authority of the federal government.

Second. The regulation of commerce with foreign countries, between the provinces, and with the Indian tribes; the coinage of money; the estab-

[1] *Cf.* Jose Manuel Estrada, Curso de Derecho Constitucional Federal y Administrativo, Buenos Aires, 1895.

lishment of a uniform system of weights and standards, uniform bankruptcy laws, and laws for the punishment of piracy on the high seas.

Third. Legislation relating to naturalization and citizenship.

Fourth. The determination of the relation between church and state.

Fifth. The power to determine the territorial limits of the individual provinces and to regulate relations with Indian tribes.

Sixth. The establishment of post-offices and post-roads.

Seventh. Jurisdiction over the territories of the nation and over such places as may be designated for national institutions, civil or military.

Concurrent jurisdiction with the federal government is exercised by the provinces in the following cases:

First. Legislation relating to the settlement of public lands. The federal government legislates with reference to public lands belonging to the nation, whereas the jurisdiction of the provinces extends over the public domain of the provinces.

Second. The establishment of banks of issue, although provincial banks, requires the authorization of the national congress.

Third. The encouragement of industry and the fine arts.

Fourth. The encouragement of public instruction.

Fifth. The levying of taxes with the one limitation that the provinces are prohibited from levying taxes on imports or exports.

Sixth. While the federal government is given power to prescribe the civil, criminal, commercial, and mining codes for the nation, the provinces are given concurrent power with the federal government to adopt codes of procedure.

In the division of powers between central and local governments, the most striking contrasts with the constitution of the United States are to be found in the articles relating to: (1) Civil and penal legislation (Chap. IV, art. 67, sec. 11); (2) public instruction (Chap. IV, art. 67, sec. 16); (3) industry and commerce (Chap. IV, art. 67, sec. 16).

CIVIL AND PENAL LEGISLATION.

Article 67, section 11, of the Argentine constitution reads as follows:

"To enact civil, commercial, penal, and mining codes without encroaching upon the local jurisdictions, the provisions of such codes to be enforced either by the federal or provincial courts, according as the matters or persons may fall under their respective jurisdictions. And especially to enact general laws on naturalization and citizenship, for the whole nation, based upon the principle of citizenship by nativity, as well as laws on bankruptcy, counterfeiting of money and forging of public documents of the state, and on the establishment of trial by jury."

This article gives to the federal congress the power to adopt civil, commercial, penal, and mining codes which shall apply throughout the republic. This unity of legislation is restricted to the substantive law, each province having the power to establish its own codes of procedure. The nationalization of the civil and criminal law was the natural result of conditions existing during the colonial period.

Spain gave to all the provinces of the River Plate a common system of law, and this system remained in force after the declaration of independence. The constitution of 1817 [1] specifically provided that the Spanish civil and criminal law should remain in force until the government was able to formulate a new system.

Pursuant to the powers granted in article 67, the following national codes were adopted by the congress:

First. The commercial code by act of September 12, 1862, which took effect the same year. In 1890 a revision of this code was completed.
Second. The civil code by act of September 29, 1869; effective in 1871.
Third. The mining code by act of December 8, 1886; effective in 1887.
Fourth. The penal code by act of December 7, 1886; effective in 1892.

The power thus exercised by the central government has been regarded by some eminent Argentine commentators as in essential contradiction with the spirit of a federal system.[2] The more recent commentators, however, agree with Alberdi, who as early as 1852, in formulating the "bases for the Argentine constitution," [3] stated that if each province were to be permitted to formulate its own civil, commercial, and penal codes, the result would be neither a federal nor a consolidated state, but rather a chaos of rules which would be a constant obstacle to the economic and social progress of the country.

The system of national codes is now so firmly established that the so-called "liberty of codes" has even passed out of the realm of academic discussion. In fact, the movement for national codes of procedure is fast gaining ground.

PUBLIC EDUCATION.

Chapter IV, article 67, section 16 reads:

"To provide for all that conduces to the prosperity of the country, to the advancement and welfare of all the provinces, and to the advancement of the enlightenment of the people, by prescribing plans for general and university instruction and by promoting industrial enterprise, immigration, the construction of railways and navigable canals, the colonization of the public lands, the introduction and establishment of new industries, the importation of foreign capital, and the exploration of the interior rivers, by protective laws for these purposes, by concessions of privileges for a limited time, and by rewards which shall act as an encouragement."

This article is framed in general terms and makes the establishment of institutions for "general and university instruction" a function of the federal government. Its meaning is made clearer

[1] Art. II, section 2.
[2] *Cf.* José M. Estrada, Politica Liberal bajo la tiranía de Rosas.
[3] Bases y Puntos de Partida para la Organizacion Politica de la Republica Argentina, by Juan B. Alberdi, Valparaiso, 1852.

when brought into relation with article V, which makes the provincial governments responsible for the primary grades — *i.e.*, the first six years of the public-school system. This does not, however, exclude the federal government from all participation in primary instruction, but gives it concurrent powers with the provinces. Within the last few years the federal government has been making use of this power by establishing primary schools in the country districts, thus supplementing the work of the provinces. Similarly, the provisions of article 67 have been construed to give the provinces powers concurrent with the central government, in the establishment of universities and institutions for secondary instruction. The province of Santa Fé has established a university, and a number of the provinces, notably Buenos Aires, Mendoza, Corrientes, and Córdoba, have established normal and high schools.

Broadly construing the powers granted by the constitution, the federal government in 1871 [1] passed a law under which the federal treasury contributes toward defraying a portion of the expense of primary education in those provinces whose resources will not permit them to support an adequate system. In 1878 [2] a further step was taken in establishing federal supervision over instruction in private schools. Finally, in 1884,[3] the federal government established the principle of compulsory education for children between 6 and 14 years.

INDUSTRY AND COMMERCE.

Article 67, section 12 reads as follows:

To regulate commerce by sea and land with foreign countries, and among the several provinces.

The provision of the Argentine constitution with reference to the regulation of commerce is practically the same as article 1, section 8, paragraph 3, of the constitution of the United States. The federal congress is given power "to regulate commerce by sea and land with foreign nations and among the several provinces." In the interpretation of this article the jurisprudence of the supreme court of the United States has been followed.[4]

In order to supplement this general grant of power, section 16 of article 67 gives to the federal government authority to adopt such measures as may promote the prosperity of the country, the progress

[1] Act of September 21, 1871. [2] Act of September 30, 1878. [3] Act of July 8, 1884.

[4] See opinion of supreme court, declaring unconstitutional a tax imposed by the legislature of Entre Ríos on cattle passing through the territory of the province. An attempt was made to justify the tax as an "inspection duty," but the supreme court held that it was a tax on inter-provincial commerce and as such unconstitutional. (Opinions Supreme Court, 2d series, Vol. XII, p. 498.) Similarly a tax on introduction of cattle imposed by the legislature of San Juan. (Opinions Supreme Court, 2d series, Vol. VI, pp. 378–383.)

of the provinces, and the enlightenment of public opinion, formulating for these purposes programs of secondary and university instruction and adopting measures for the development of immigration, the construction of railroads and navigable canals, the settlement of public lands, the establishment of new industries, the introduction of foreign capital, and the exploration of rivers in the interior of the republic. Three methods are specified by which the congress may accomplish these purposes: (1) legislation adapted to this purpose; (2) grants for limited periods of special privileges or franchises to private companies; (3) the offering of special premiums or subsidies to stimulate private effort.

The interpretation and exercise of federal control over the railroads of the country represent one of the distinctly nationalizing influences in the political development of the country. The railroad law passed November 24, 1891 (law No. 2873), provides that the railroads of the country shall be divided into two classes — national and provincial. All lines are considered national when constructed or subsidized by the national government, or when connecting the federal capital with any of the provinces or establishing communication between the provinces or with any foreign country. This means that practically all railroads of any importance are classified as national. The granting of franchises for the construction of such roads and the control over them are vested in the national government, so that provincial control over the railroad systems of the country is practically excluded. This unity of control has been the source of real strength in securing a systematic and orderly growth of the means of communication of the republic. It has prevented waste in the duplication of lines and has also secured the fulfillment of real national purposes in the development of the transportation system.

The Argentine Republic has never been compelled to pass through such anarchical conditions as prevailed in the United States for so long a period in all matters relating to railroad development. Furthermore, the narrow and ofttimes selfish views of local authorities have been completely eliminated in the development of the transportation system. It is true that this broad interpretation of national powers also has been instrumental in further emphasizing the subordination of the provincial governments to the national authorities.

Furthermore, the powers granted in section 16 are so broad as to give to the federal government complete control over the industrial development of the country. Its action is not limited to the federal territories, but is expressly extended over the provinces for the purpose of furthering their industrial progress. The authority of the central government may even extend beyond matters of economic interest, for it is given power to take measures, along the lines above

indicated, to promote the general welfare of the provinces. It will be noted that this clause differs from the "general welfare" clause of the constitution of the United States, which has been interpreted to give no additional powers to the central government, but simply states the general purpose for which the express and implied powers may be used.

The powers granted in this section, in conjunction with the authority to give financial aid to those provinces whose resources are insufficient to meet ordinary expenditures, have been used to justify a wide extension of federal authority in matters of purely local concern. In almost all the larger cities of the republic, especially in the capitals of the provinces, the federal government is undertaking the construction of drainage systems, water-supply, and other public works intended to improve local sanitary conditions. These public works are financed by the central government, through the issue of special sanitary bonds bearing 5 per cent interest and 1 per cent amortization. The income from these works is pledged to pay this interest and amortization. In effect, therefore, the federal government lends its credit to the provinces, undertakes the construction of the works, and administers them until the bonds have been canceled, when they are to be turned over to the respective provincial governments. Up to December 31, 1906, the federal government had issued sanitary bonds amounting to $5,280,000. Some idea of the importance of the service performed in this respect may be obtained by passing rapidly in review the work now in progress in the several provinces:

(1) In the city of Salta, capital of the province of the same name, the national government has provided a water-supply, drainage system, sewage purification, and the reclaiming of large tracts of swamp-land on the outskirts of the city. The cost of these works will be $704,460.24.

(2) In the city of San Juan, capital of the province of San Juan, the national government has constructed the water-works, and is now extending the system in order to increase the volume of water supplied and to extend the system throughout the city. The cost of these works was $254,029.60.

(3) In the city of San Luis the national government constructed during the years 1901 and 1902 a new water-supply, which was enlarged during the years 1903 and 1904. The cost of these works was $122,631.

(4) In 1900 the national government agreed to provide the city of Jujuy with a public water-supply, and this plan was carried out during the years 1902 and 1903. In 1904 the system was considerably extended and improved. The outlay was $158,629.24.

(5) In 1901 the federal government agreed to furnish the city of Santiago del Estero with a complete system of water-supply, for which the outlay was $282,859.28.

(6) In the same year (1901) the federal government agreed to provide the city of La Rioja with a water-supply. Up to December 31, 1906, $165,764.72 had been expended on these works, and it will probably require double this amount to complete the system.

(7) In 1903 the request of the city of Corrientes for a public water

supply was complied with. Up to December 31, 1906, $462,238.04 had been expended on these works.

(8) In the city of Mendoza the federal government is executing sanitary works on a large scale, including water-supply and drainage systems. Up to December 31, 1906, the total amount expended was $693,189.20, and it will require at least an equal amount to complete the works.

(9) In the city of Catamarca the federal government has restricted itself to improving the existing water system at a cost of $83,366.80. In 1903 the federal government agreed to further extend the system and establish an electric-light and power plant at a cost of $183,081.36.

(10) In the city of Santa Fé the federal government has constructed a water-supply and drainage system of which the total cost will be about $850,000, of which $736,474.64 had been expended up to December 31, 1906.

(11) In 1903 the federal government agreed to construct a drainage system for the city of Paraná and to expend $484,000 for this purpose.

(12) In the city of Córdoba the federal government has recently constructed a system of drainage and water-supply at a cost of nearly $2,000,000.

This extension of federal powers is not regarded with alarm by the local authorities. In fact, the central government is constantly besieged with requests to undertake local works. The sanitary condition of the provincial capitals is being greatly improved through these efforts of the national government, but it is evident that the local civic life of the provinces suffers by reason of this feeling of dependence on national aid.

THE CONSTITUTIONAL POSITION OF THE PROVINCES.

In order to understand the position occupied by the provinces in the political system of Argentina, it is necessary to bear in mind their origin and the part they played, both during the colonial period and during the early years of the republic. The royal ordinances of Charles III of 1782 and the supplementary ordinance of 1803, which divided the vice-royalty into eight intendencias, constitute the basis of the present system.[1] Between 1813 and 1820 further subdivisions occurred, due to three distinct causes: (1) the action of the early national revolutionary assemblies, one of which created the province of Córdoba; (2) revolutionary movements caused by the desire of sections of existing provinces to set up independent provincial governments, as in the case of the province of La Rioja; (3) the revolutionary initiative of town councils bent on setting up separate provincial governments, as in the case of Santa Fé, Santiago, San Luis, San Juan, and Catamarca. While the formation of new provinces may be traceable to different causes, they could not be definitely constituted as such until recognized by the national government. This recognition was extended to Entre Ríos, Santa Fé,

[1] Gonzalez, Manual de la Constitucion, p. 55.

and Corrientes in 1814; to Santiago del Estero, San Juan, La Rioja, and San Luis in 1820; to Catamarca in 1821, and to Jujuy in 1831.

Whatever may be the political principles which the founders of the Argentine system had in view in organizing the government, the historical development was totally different from that of the United States. The "Argentine Nation," as the constitution designates the political union, was not formed by the coming together of a group of sovereign states. Social unity and the fundamentals of political unity were established long before the formation of the provinces which now constitute the federal union. The provinces were not in their origin sovereign states, and even to-day they resemble more closely administrative subdivisions than separate political entities. In spite of the many internal dissensions which threw the country into a condition of political anarchy prior to the dictatorship of Rosas in 1829, the nation did not lose its sense of social unity. The moral and ethnical bases for a national organization were never destroyed.

At the time of the adoption of the constitution of 1853 the provinces, the union of which forms what is now the Argentine Republic, were organized under written constitutions. One of the most important questions that presented itself to the constitutional convention of 1852 was the plan that should be adopted in dealing with these existing constitutions. Alberdi, whose "bases" exerted so marked an influence on the deliberations of the convention, pointed out the necessity of subordinating all of these provincial constitutions to the principle of national organization. He therefore advocated that the national constitution be first framed and that the provinces be compelled to adopt new instruments, which should be submitted to the national congress for revision.

This plan was finally adopted, the constitution of 1853 providing as follows:

(1) The provincial constitutions shall be submitted to the national congress for revision before publication (art. 5).

(2) The congress shall have power to examine the provincial constitutions, and reject such as are not in harmony with the principles of the national constitution (art. 64, par. 28).

(3) Each province shall frame its own constitution and shall submit it to the congress for examination before putting it into execution.

In accordance with these provisions, all the provinces then forming part of the confederation framed new constitutions, which were submitted to and accepted by the congress. As we have seen, the refusal of the province of Buenos Aires either to attend the convention of 1852 or to enter into the union left pending a question vital to the future of the republic, for it was evident that no vigorous political fabric could be built up without the inclusion of this, the

strategic center of the ancient viceroyalty and its most powerful constituent.

The struggle which took place for the incorporation of Buenos Aires into the union centered for a time about the acceptance of the clauses of the constitution which we have just considered. Buenos Aires was firmly opposed to any plan which would require the submission of her constitution to a national assembly. The provincial convention which assembled in 1860 for the purpose of examining the national constitution and of proposing amendments thereto, the acceptance of which would induce Buenos Aires to enter the union, proposed the elimination from the national constitution of all clauses which would require a federal revision of provincial constitutions. This change was accepted by the national convention that assembled in Santa Fé. Under the constitution as at present in force, therefore, amendments to provincial constitutions may be made without submitting them to the national congress. This, however, does not constitute any real menace to the unity of the federal system, owing to the clause of the national constitution declaring its provisions to be the supreme law of the land and also the provision requiring the provincial constitutions to conform to the following standards: (*a*) that the system of government contained therein be representative and republican; (*b*) that the provincial constitutions be in harmony with the principles, declarations, and guarantees contained in the federal constitution; (*c*) that the provincial constitutions assure the orderly administration of justice; (*d*) that they provide for a municipal system, in which the principle of local self-government shall be recognized; (*e*) that they provide for a system of primary education.

Although the Argentine system is essentially centralized, as compared with that of the United States, the individual provinces are given authority to enter into treaties and agreements with one another for the administration of justice, the furtherance of economic interests, and the execution of public works (art. 107). The constitution requires that the national congress be informed of such agreements, but does not state that their validity is dependent upon the approval of the central government. Several Argentine commentators [1] have held that the power of the congress to control these agreements is implied, but this question still remains one of the unsettled problems of Argentine constitutional law.

The provinces have made but little use of the powers thus granted. Instead of joint provincial action in the construction of public works or the performance of other services, the tendency is to appeal to the federal government whenever local resources are insufficient to carry out a project for local improvement. Even in those cases in which provision for such joint provincial action has been made in the pro-

[1] Joaquin V. Gonzalez, *op. cit.*, p. 732.

vincial constitutions, no action in furtherance of the plan has been taken. The constitution of San Juan,[1] for instance, gives power to the provincial government to create a supreme court jointly with one or more neighboring provinces, but no steps have ever been taken in this direction.

Under article 104 of the federal constitution, the provinces enjoy all powers not granted to the federal government. As at first framed by the committee of the constitutional convention of 1852, this clause gave to the provinces all powers not expressly granted to the federal government. In the final draft, however, the word "expressly" was eliminated, thus giving to the federal government the possibility of a far wider exercise of powers.

It is a fact worthy of note that the constitution of the United States reserves either to the states or to the people all powers not granted to the federal government, whereas the Argentine constitution reserves to the provinces all powers not granted to the central government and makes no mention of those "reserved to the people."

The constitutional provisions which have exerted the greatest influence on the relation between the federal government and the provinces are contained in articles 5 and 6 of the constitution, as follows:

ART. 5. Each province shall adopt its own constitution, which shall provide for the administration of justice in its own territory, its municipal system, and primary instruction, such constitution to be framed upon the republican representative plan, in harmony with the principles, declarations, and guaranties of the national constitution. Upon these conditions, the federal government shall guarantee to each province the enjoyment and exercise of its institutions.

ART. 6. The federal government shall have the right to intervene in the territory of the provinces in order to guarantee the republican form of government or to repel foreign invasion; and when requested by the constituted authorities, to maintain them in power, or to re-establish them if they shall have been deposed by sedition or by invasion from another province.

The interpretation given to these articles and the effect of this interpretation on the constitutional position of the provinces will be made the subject of more detailed study in the next chapter. Suffice it to say that these provisions have enabled the central government to place the provinces in a condition of political subordination which has contributed more than any other factor toward retarding the development of a vigorous local political life.

In considering the position of the provinces in the Argentine system it is important to bear in mind that their subordination to the central government has been further affected by their lack of financial resources and consequent inability fully to meet the requirements of the public administration. We have had occasion to point out that the Argentine constitution gives to the congress the power

[1] Article 119.

to grant subsidies to those provinces whose income does not suffice for the ordinary expenditures of the budget. This has opened the door to the widest extension of federal power, owing to the fact that whenever one of the provinces applies to the federal government for aid in the construction of some public work or for the improvement of the system of public education, the control over such public work is vested, in part at least, in the central government. Thus the federal government has in many cases been able to extend its powers over municipal sanitation and other matters of purely local jurisdiction.

CHAPTER VII.

PRINCIPLES AND PRACTICE OF FEDERAL INTERVENTION.

We now come to the consideration of two constitutional provisions which have been not only a source of endless discussion among Argentine commentators, but also have given rise to the widest differences of opinion in the Argentine congress. Article 5 of the constitution recites the standards to which the constitutions framed by the several provinces shall conform, as follows:

"Each province shall adopt its own constitution, which shall provide for the administration of justice in its own territory, its municipal system, and primary instruction, such constitution to be framed upon the republican representative plan, in harmony with the principles, declarations, and guaranties of the national constitution. Upon these conditions, the federal government shall guarantee to each province the enjoyment and exercise of its institutions."

Owing to its close relation to article 6 of the federal constitution, these two clauses are usually considered together. That article provides:

"The federal government shall have the right to intervene in the territory of the provinces in order to guarantee the republican form of government or to repel foreign invasion; and when requested by the constituted authorities, to maintain them in power, or to reëstablish them if they shall have been deposed by sedition or by invasion from another province."

It is apparent at a glance that these provisions of the Argentine constitution are considerably broader than anything contained in the constitution of the United States. The provinces are protected not only against foreign invasion and domestic violence, as well as guaranteed a republican form of government, but they are also protected in the enjoyment and free operation of their local institutions. To understand the full import of article 5 it is important to bear in mind the dangers which the framers of the Argentine constitution endeavored to guard against. The country had emerged from a long period of internal dissensions, during which local leaders, under the cloak of republican forms, had assumed dictatorial powers. It was evident that unless the recurrence of these conditions could be in some way guarded against, the economic and political advance of the whole country would be seriously threatened. The idea ever present to the minds of the framers was that the guarantee of the outward forms of republican government was not sufficient. They therefore inserted a provision which gives to the federal government the power to assure not merely the form but the substance of

republican rule, by guaranteeing that these institutions should not be undermined or perverted. It is true that subsequent events have shown that this power gives to the federal government far-reaching influence in provincial affairs, and has, in a number of instances, enabled the central authorities to take refuge behind this article, in order to place their political followers in power in those provinces in which the opposing party has secured control.

In order fully to appreciate the relation existing between the federal government and the provinces, it is important to bear in mind that the present provinces of the republic were closely consolidated during the colonial period and that the separatist spirit which prevailed from 1820 to 1829 did not leave a deep impress upon the essential unity of political thought and social organization of the country. This fact alone would serve to explain the power of the federal government over the provinces even in the absence of specific constitutional provisions justifying the exercise of such power.

The history of article 6 reflects with great clearness the discrepancy between law and fact in the constitutional development of the republic. In the draft of the constitution prepared by Alberdi, and which the constitutional convention of 1852 used as a basis for its labors, the right of intervention of the federal government was given the widest possible recognition. It read as follows:

"The federal government may of its own initiative intervene in the territory of the provinces, for the purpose of reëstablishing order when menaced by sedition."

In the convention, the particularistic sentiment of the provinces was sufficiently strong to secure a modification which did not in reality diminish the powers of the central government. As adopted by the convention, article 6 reads:

"The federal government shall have the right to intervene in the territory of the provinces in order to guarantee the republican form of government or to repel foreign invasion; and when requested by the constituted authorities, to maintain them in power, or to reëstablish them if they shall have been deposed by sedition or by invasion from another province.

During the period 1853–1861, this provision gave rise to abuses of authority on the part of the central government. Without the slightest justification, and merely for the purpose of securing control of the provinces, provincial governments were overthrown by federal order and new governors and legislatures more in harmony with the political affiliations of the president were placed in power. During the eight years in which this provision remained in force there were no less than twenty-six interventions, the most notorious of which were those in the provinces of San Juan and La Rioja in 1857. In the decree dated April 6, 1857, authorizing the representative of the national government, Don Nicanor Molinas, to intervene in the affairs

of these provinces for the purpose of "removing the obstacles which have prevented the organization of the constitutional authorities," he was given unlimited authority to do anything he might deem requisite to fulfill the purposes of his mission.[1] In the constitutional convention of 1860, the question of amending article 6 occupied a prominent place. A considerable number of the delegates desired to adopt the exact phraseology of the constitution of the United States on this point, restricting intervention to those cases in which the state authorities request the aid of the federal government when menaced by internal disorder or invasion by another province.

The committee to which the question was referred rejected the idea of making federal intervention conditional upon the formal request of the state authorities. In proposing the amendment to article 6, the report of the committee states:[2]

"The intervention of the federal government in the provinces, with or without request on the part of the provincial authorities, may be regarded either as a duty or as a right. In the former case it is an obligation arising out of the guarantee contained in article 5 of the constitution, to wit: 'The federal government guarantees to each province the enjoyment and free exercise of its institutions.'

"In the latter case it is a power which the federal government exercises as an inherent right; first, whenever one or more provinces violate their obligation toward the union, as, for instance, if they were to attempt to establish a monarchical form of government or perpetuate executive power through internal violence in violation of all democratic principles; or, secondly, when the safety of the nation requires such intervention."

The committee took the view that while it was necessary to preserve the power of the central government to intervene, even without the request of the provincial authorities, it was also desirable to define more clearly the powers of the federal authorities by indicating on the one hand under what conditions intervention may take place without request, viz., to guarantee a republican form of government and to repel foreign invasion, and in what cases such intervention can take place only upon the request of the provincial authorities, viz., to maintain or reëstablish their powers, when overthrown by sedition or by invasion from another province.[3]

The relation between article 6 as thus amended, and article 4, section 4,[4] of the constitution of the United States has been the

[1] *Cf.* Urrutia, Intervenciones del Gobierno Federal, p. 33, Buenos Aires, 1904.

[2] *Cf.* M. A. Montes de Oca, Derecho Constitucional, Vol. I, p. 301, Buenos Aires, 1896. Also see Proceedings of the Constitutional Convention of 1860.

[3] ART. 6. The federal government shall have the right to intervene for the preservation in the territory of the provinces of the republican form of government or for repelling foreign invasion; and when requested by the provincial authorities, for maintaining them in power, or reëstablishing them if deposed by sedition or by invasion from another province.

[4] ART. IV, SEC. 4. "The United States shall guarantee to every state in this union a republican form of government and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature can not be convened) against domestic violence."

subject of considerable discussion by Argentine commentators.[1] In spite of striking similarity in formulation, the differences in application in the American and Argentine systems are fundamental and far-reaching.

It is evident that the provision of article 4, section 4, of the constitution of the United States might well have been made the excuse for as wide an extension of federal power as has taken place in Argentina. This possibility did not escape the notice of the supporters of states' rights. In 1867 Reverdy Johnson, in the course of a debate in the United States Senate, said:

"Does it [this clause] give to the United States authority to interfere with any of the existing rights belonging to the states at the time they adopted the constitution? If it did, then everything was thrown afloat; the United States then, by its congress, is to become a great convention not only to deliberate for the interests and safety of the people of the United States but from what they may from time to time believe to be the true interest and safety of the people of each state in the management of its own concerns."

The limited use that has been made of the clause guaranteeing to each state a republican form of government has not been due to any restrictions upon federal power imposed by the courts. On the contrary, in the case of Luther *vs.* Borden (7 Howard, 42), decided in 1849, the court held that the power to determine which is the legitimate government of a state is a political rather than a judicial function, and the decision of the political organs of the government (in this case the congress) is binding on the courts. So far as the power of the federal government over the states is concerned, this authority to determine which government is legitimate carries with it important consequences, for in order to determine whether a particular government is republican or not the congress must first decide which is the real government of the state. The guarantee contained in article 4, section 4, is usually invoked when, by reason of violent party conflicts, each party has set up a government which it claims to be the legitimate government of the state. In such cases the United States supreme court has held that the decision of the congress as to which government should be recognized is final and not subject to review by the courts.

This power is further increased by the fact that the courts have steadily refused to prescribe, with any degree of detail, the standards to which a government must conform in order to be republican in form. The nearest approach to such a definition was made *in re* Duncan (139 U. S., 449), in which the court said:

"By the constitution, a republican form of government is guaranteed to every state in the union, and the distinguishing feature of that form is the

[1] *Cf.* Barrequero. Estanislao S. Zeballos, in Revista de Historia y Derecho, 1908; Luis V. Varela, Estudios sobre la Constitucion Nacional Argentina, Buenos Aires, 1896.

right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves."

It will readily be seen that the powers thus vested in congress might well have been used by the dominant party to secure political control of those states in which a majority could not be secured by legitimate means. The reasons for the self-control shown by the congress in the exercise of this power are to be sought, first, in the historical circumstance that the deeply rooted feeling of state autonomy would have aroused a strong movement of public opinion against any such use of power; secondly, the law-abiding sense and spirit of legality of the mass of the people would have condemned any attempts to foment those local disorders which, as a rule, are a necessary preliminary to the exercise of federal intervention.

That portion of section 4 which is intended to protect the states against domestic violence becomes effective in the American, as in the Argentine constitution, only upon the request of the local authorities. The only marked differences between the two provisions are: (1) that the constitution of the United States indicates specifically the authority from which the request must emanate, viz., "on application of the legislature, or of the executive (when the legislature can not be convened)," whereas the Argentine constitution refers in general terms to the "provincial authorities"; and (2) the constitution of the United States provides for such intervention in order to protect the State against any form of domestic violence. The Argentine constitution seems to have solely in view disturbances of a political character, for it authorizes intervention upon request "for maintaining them [the provincial authorities] in power, or reëstablishing them if deposed by sedition or by invasion from another province."

In spite of the broader formulation of this clause in the constitution of the United States, the use made thereof has been far more limited than in the Argentine system, owing mainly to the fact that under our system of government the established practice with reference to the militia is quite different from that which obtains in Argentina, although the constitutional provisions relating to this subject are almost identical.[1] The congress of the United States is given power "to provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions," and to "provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states respectively the appointment

[1] Compare chap. 4, art. 67, par. 24, of the Argentine constitution with art. 1, sec. 8, pars. 15 and 16, of the constitution of the United States.

of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

Although these provisions reserve wide powers to the states, they aroused violent opposition in the constitutional convention. It was feared that the powers vested in the congress would place the states at the mercy of the federal government. These fears have proved totally unfounded, for while congress has prescribed a uniform system for the organization of the militia, the states have maintained the immediate control over their respective contingents which may at any time be called forth by the state authorities for the purpose of suppressing domestic violence. In actual practice the federal government has shown itself extremely reluctant to respond to the request of the state authorities. The recent formation of a great national army and the incorporation of the militia of the several states into this army has temporarily changed this situation.

An instance, which occurred in the state of Nevada, clearly illustrates this attitude of the national government. In November 1907 the governor of Nevada, fearing that the then existing strike of miners might lead to serious disturbances, called upon the president for federal troops. These were promptly dispatched. Ten days after the arrival of the troops the president sent word to Governor Sparks that inasmuch as no disturbance had occurred he had decided to order the recall of the federal troops. In this telegram [1] the president called the governor's attention to the fact that the policing of the territory of the state was the duty of the local authorities. In a subsequent telegram, dated December 19, 1907, the president again emphasized the duties of the state government and called attention to the fact that the national government can not permit a state to avail itself of federal aid in order to escape its manifest obligation to preserve domestic order.

The use of federal troops for the purpose of restoring order in Chicago at the time of the great railway strike in 1893, in spite of the protests of the then governor of the State, was justified by the president as a means of protecting the national government in the exercise of one of its most important functions, viz., the maintenance of the national postal service. The railway lines passing through Chicago were construed as integral parts of the post-roads of the United States, and to keep these roads open for traffic was considered one of the obligations of the national government. While technically, therefore, this case was not regarded by the president as belonging in the class of "interventions," it was evident to everyone that the maintenance of the postal service and the free transit over the post-roads were the constitutional principles which the federal government invoked in order to justify its determination to put a stop to the destruction of property in the Chicago railway yards.

[1] *Cf.* telegram dated December 17, 1907, of President Roosevelt to Governor Sparks.

In the Argentine system the application of the articles relating to the militia has been totally different from that which has obtained in the United States. The organization of a standing army and the establishment of the principle of universal military service have prevented the development of anything corresponding to the local militia in the United States. The entire armed force of the republic, with the exception of the local police, is under the immediate direction of the national authorities. The provincial authorities are, therefore, helpless when confronted by any emergency arising out of local disorders. This condition of dependence has been exploited to the utmost by the national government and has contributed more than any other factor in enabling the national executive to secure political control over the provincial governments.

It is important to examine in detail some of the typical instances of intervention, for they illustrate more clearly than any other phase of the constitutional practice of the country the relation of the provinces to the central government.

As has already been pointed out, the constitution of 1853 (art. 6) gave to the national government the power to intervene, upon or without the application of the provincial authorities, for the sole purpose of establishing order when menaced by sedition or to guarantee national safety when menaced by a foreign attack or invasion. The most typical case of intervention under this clause was undertaken in 1857 in the province of San Juan. Although the provincial authorities were violently opposed to such intervention and there were no indications of disturbances menacing the public order, the executive by decree appointed a federal commissioner to take charge of the government of the province, and even went so far as to authorize him to declare martial law.[1]

The use thus made of the power of the central government resulted in placing its political sympathizers in control of the province. The success of the San Juan experiment immediately led to interventions in the provinces of Rioja, Jujuy, Mendoza, Santiago del Estero, Entre Ríos, Corrientes, Santa Fé, Córdoba, and San Luis.

The constitutional amendment of 1860, in limiting the scope of federal intervention, without specific request on the part of the provincial authorities, to the guarantee of a republican form of government and for the repelling of foreign invasion, was intended to set more definite limits to federal power. The interventions that have taken place since the passage of this amendment indicate that it has failed of its purpose, for where article 6 can not be invoked to justify federal encroachments, article 5 has served the purposes of the national government. Furthermore, as we shall have occasion to see in examining a number of the more recent instances of inter-

[1] Urrutia, Intervenciones del Gobierno Federal, p. 33, decrees of April 6 and October 15, 1857.

vention, the interpretation, by both legislative and executive branches of the government, of the guarantee of a republican form of government, has been such as to make intervention possible whenever the party in power in the federal government deems it likely that thereby their hold on the provincial governments will be strengthened.

The established practice in the Argentine system is that each intervention must be provided for by special act of congress. When congress is not in session the president may decree such intervention, submitting the same for the approval of congress at its next session. Such approval or disapproval has little or no value, however, inasmuch as the purposes of such intervention are, as a rule, fully accomplished before the convening of congress. When, therefore, there is a lack of political harmony between the president and congress, and the former desires to secure a better hold on the provincial political situation, interventions are decreed during the recess of congress. If, however, such opposition exists, as was the case in 1907, congress is loath to adjourn for fear of the extension of executive influence through the process of federal interventions decreed by the executive. The deadlock between the president and congress which occurred in January 1907, and which was brought to a climax by the executive decree of January 25, 1907, declaring the congress adjourned *sine die*, was caused in part by the desire of congress to remain in session until the opening of the next regular session, in order to prevent the president from undertaking federal interventions in certain provinces, notably Corrientes, and thus strengthening his political influence.

Of the interventions occurring since the amendment of the federal constitution in 1860 [1] I have selected those which either took place or were contemplated, in San Juan, Salta, Mendoza, San Luis, and Corrientes, owing to the fact that it was my good fortune to be in Argentina in 1906, 1907, and 1908, at the time of these interventions and I was therefore able to study the political as well as the constitutional aspects of the question. The most typical case — the intervention in the province of San Juan — is made the subject of detailed study in the next chapter.

In the first two instances to which I wish to refer, intervention did not actually take place, but the failure of the president to carry out his plan illustrates an important aspect of political practice in the Argentine Republic.

During the course of the year 1906, the president received from the province of Mendoza three requests for intervention:

(1) From the provincial chamber of deputies, which requested such intervention "for the purpose of guaranteeing the republican form of government, which is menaced by the undermining of the

[1] See a government publication entitled "Intervenciones del Gobierno Federal en las Provincias," by Manuel Alberto Urrutia, 2 vols., Buenos Aires, 1904.

electoral system by the violation of the constitutional requirements regulating the formation of the electoral registry, and by the disrepute into which the judicial branch of the provincial government has fallen."

(2) From the chief justice of the supreme court of the province, who based his request on the "necessity of guaranteeing the free exercise of the functions intrusted to him."

(3) From a number of members of the legislature and other citizens, who appealed to the national government to guarantee to them the untrammeled exercise of their local political and civil rights.

In October 1906 the president sent a federal commissioner to Mendoza to inquire into the local situation and to report to him as to whether the complaints thus filed were well founded. On November 12 the commissioner submitted his report. He first undertook an examination of the judicial system of the province. After entering upon a severe criticism of the defects of the judicial organization of the province, he arrived at the conclusion that these defects did not furnish a justification for federal intervention.

The petition of the chief justice of the supreme court was based on the fact that he had been deprived of the presidency of the electoral revision commission. An analysis of the charge led the commissioner to the conclusion that this did not furnish a justification for federal intervention. The examination of the operation of the electoral system showed the existence of certain defects in the formation of the registry rolls, but not of sufficient importance, in the view of the commissioner, to justify intervention.

After rejecting the specific grounds for intervention upon which the requisitions were based, the commissioner proceeded to point out that in the province of Mendoza the government had been in the habit of giving its support to official candidates and using the influence of the administration to secure the election of these candidates. He regarded this practice as unrepublican and sufficient ground for intervention for the purpose of guaranteeing the republican form of government. In pursuance of this recommendation, the president sent a special message to congress proposing intervention in the province of Mendoza. In the national chamber of deputies the opposition to the president had assumed formidable proportions and it was feared that federal intervention would enable him to secure the election of one of his personal supporters as governor of the province. The bill submitted was, therefore, rejected.

If the support of candidates for office by the provincial administration is to be regarded as undermining the republican form of government and therefore justifying the intervention of the federal government to take charge of the provincial elections, it is evident that the entire responsibility for the integrity of political life in the

provinces is shifted to the federal government. Independently of the stretching of the constitutional provision involved in this interpretation, and taking for granted that the federal government in every case is actuated by the highest motives, the incalculable harm done to the institutional development of the provinces is at once apparent.

In November of the same year (1906) the Argentine senate adopted a resolution requesting the president to send a commissioner to the province of Salta for the purpose of "ascertaining the conditions under which the suffrage was there being exercised."

On December 12 the commissioner submitted his report, in which he recommended that the federal government intervene in the province of Salta on the following grounds: (1) the absence of an election law and the failure to prepare a registry of voters; (2) the failure of the province to put into practice the provision of the provincial constitution providing for proportional representation; (3) the violation of the principle of the separation of powers through the usurpation of judicial powers by the executive, in declaring unconstitutional certain laws relating to local government.

During the progress of this investigation an agreement was reached between the governor and the president with reference to the candidate for the governorship at the approaching election. The result was that the report was sent to congress without any recommendation from the executive, and no further attempt was made to carry out the recommendation of the commissioner.

The federal intervention in the province of San Luis in 1907 was due to an insurrectionary movement which occurred on the eve of the inauguration of a newly elected governor. In fact, this was the main purpose of the insurrection. It was thought that federal intervention thus secured would lead to new elections and enable the opposition party to place its candidate in power. A federal commissioner was immediately appointed to intervene in the affairs of the province "for the purpose of establishing public order, undermined by sedition, and to assure the free operation of local political institutions at present made impossible by acts of violence." After an examination of the local situation, the commissioner issued a decree ordering the installation of the governor-elect. It is interesting to note the wording of the closing paragraph of this decree, which reads as follows:

"In pursuance of the instructions of the federal executive, the federal commissioner hereby convenes the provincial legislature to assemble on Tuesday, September 17, in order to administer the oath of office to the governor-elect, Dr. Esteban P. Adaro."

Thus, because of a disturbance which did not assume greater proportions than a local riot, the federal government assumed command of the affairs of the province, and after restoring order formally installed the governor-elect.

The next instance of federal intervention to which some reference must be made occurred in the province of Corrientes in October 1907. The case presents peculiar interest because of the extraordinary procedure that was followed. Throughout the year 1907 persistent rumors were afloat that a revolution was about to break out in Corrientes in order to depose the then governor, Juan E. Martínez. In September the president sent a confidential agent to the capital of the province, charged with the duty of trying to bring about an agreement between the provincial government and the opposition. His efforts in this direction were unsuccessful. Congress not being in session, the president, on October 11, issued a decree ordering federal intervention in the province of Corrientes "for the sole purpose of organizing the provincial legislature." The federal commissioner, Senator Eugenio Puccio (appointed after the resignation of the commissioner first appointed, Dr. Dimet), immediately assumed full authority in the province, directing the disarming of all local forces, taking command of the police, and supplanting both the legislative and executive authorities of the province. The commissioner then ordered the formation of new registry rolls, the selection of judges of election, and other measures preparatory to the elections for members of the provincial legislature.

While the execution of these measures was in progress there occurred a most extraordinary proceeding, which indicates the far-reaching powers exercised by the federal government in the provinces during these "interventions." According to the constitution and laws of the province, but one-third of the members of the legislature was to be elected. Under the terms of a special agreement between the commissioner and the members of the legislature, it was arranged that all the members of the legislature should resign, thus enabling the federal commissioner to order a complete renewal of both houses. Under his supervision this was done. Immediately after the holding of elections and the installation of the new legislature, the federal commissioner decided to reinstall the governor. In pursuance of this purpose a decree was issued on April 22, 1908, by which the following day (April 23) was designated as the date for the installation of the governor. A few hours after the issuance of this decree the commissioner received a communication from the provincial chamber of deputies, informing him that proceedings for the impeachment of the governor had been instituted and that his suspension, pending such proceedings, had been voted.

In view of this turn of affairs, and owing to the fact that no lieutenant-governor had been elected in the province, the commissioner revoked his decree of April 22 and issued a new decree, placing the executive authority in the hands of the presiding officer of the provincial senate. The impeachment proceedings thus instituted

resulted, as was expected, in the governor's removal from office and in the ordering of new elections.

It is hardly necessary to add that beneath this appearance of legality, definite political purposes were hidden. The case is of special interest because it indicates that the interpretation of the constitutional duty put upon the national authorities to "assure to each province the free exercise and enjoyment of its local political institutions" has given to the central government far-reaching influence over the provinces.

It is true that if the national government were always actuated by the highest motives, this provision, together with the clause guaranteeing to each province a republican form of government, might serve to give stability to the political system of the republic through the prompt suppression of any local disturbances and the discouragement of any attempt on the part of disgruntled minorities to conspire against the constituted authorities. Such disinterested interpretation can not always be expected. The absence of national party organizations, the dependence of the president on the support of the provincial governors and on the possibility of securing through their influence the election of senators and deputies in harmony with his policy, constitute a real temptation to use "intervention" for the purpose of strengthening the political position of the national executive.

The absence of an organized public opinion, upon which the president may depend in the execution of his policies, makes it essential that he should have the coöperation of the political leaders of the provinces. Without such support he soon finds himself confronted, not only by a combination of hostile provincial governors, but also by a hostile congress. Several times in the history of the country the president has been compelled to resign because of such opposition.

It is evident that where personal political interests of such vital import are involved a disinterested constitutional interpretation is almost if not quite precluded. The history of the long series of interventions, beginning with that in Tucumán in 1853 and ending with the more recent instance of Corrientes, clearly demonstrates that while, superficially viewed, these interventions seem to be a guarantee of the maintenance of order in the provinces, their real influence is quite the opposite. The possibility of securing federal intervention is a constant temptation to the minority party to plan revolutions and to provoke armed disturbances. This fact alone exerts a most unfortunate influence on the political life of the provinces. The line of least resistance for a group of political leaders opposed to the governor is to cultivate friendly relations with the president of the republic and secure some assurance of support. This support once secured, it is comparatively easy to secure federal intervention under

whose patronage the party assured of the president's support is certain to triumph.

Thus the center of political responsibility is shifted from the province, where it properly belongs, to the federal capital, Buenos Aires. Minority parties in the provinces, instead of conducting a systematic campaign in order to increase their following with the people, prefer to treat with the federal authorities for the purpose of securing control of the machinery of government.

Much has been said and written on the possibility of developing in the provinces a more independent and distinctive local life. With the increase in population and the development of natural resources, they will be assured of a more independent economic existence. The future of their political life is far more difficult to foresee. As careful a student of Argentine affairs as Dr. Rivarola [1] advocates the constitutional recognition of what he considers a condition of fact, viz., the suppression of the provinces as independent constitutional units and their reorganization as administrative subdivisions of an unified state. The difficulties involved in any such change we have had occasion to examine.[2]

Viewing the situation in the light of the constitutional development of Argentina during the last fifty years, one is forced to the conclusion that no change can be expected until the civic interest of the masses in the provinces has been aroused. The large foreign element in many of the provinces, the high percentage of illiteracy in others, and the absence in all of traditions and habits of participation in public affairs, have until recently placed the management of provincial political affairs in the hands of a small group of leaders, most of whom are usually resident in the federal capital, either as senators or deputies. Of late years there have been unmistakable indications of a growing determination on the part of the people to manage their own political affairs. The rapid progress made by popular education in Argentina, together with the constantly improving economic condition of the working classes, has developed a desire for more active participation in public affairs. Furthermore, the electoral law, which provides penalties for abstention from voting, has stimulated participation in elections. All these influences have served the further purpose of developing a better organized public opinion, which is making itself felt in establishing more effective control over the administration, both national and provincial.

[1] Del Regimen Federativo al Unitario, Buenos Aires, 1908. [2] See Chapter I.

CHAPTER VIII.

A TYPICAL CASE OF FEDERAL INTERVENTION.

The exercise of the power of "intervention" in the internal affairs of the provinces constitutes so important a factor in the proper comprehension of the Argentine federal system that it is necessary to examine in detail at least one typical instance. I have selected the federal intervention in the province of San Juan, which took place in February 1907, not only because it illustrates so clearly the constitutional and political principles involved, but also because I happened to be in that section of Argentina when this intervention was undertaken and was able, therefore, to make a detailed study of the measures adopted by the federal government.

During the early hours of the morning of February 7, 1907, a group of revolutionists under the command of Carlos Sarmiento, a retired colonel of the regular army, attacked the capitol building, the police barracks, and the quarters of the prison guard. After several hours of fighting, during which the revolutionists took possession of the capitol building, and were about to storm the police and prison barracks, a truce was agreed upon which resulted in an agreement between the local authorities and the revolutionists, couched in the following terms:

"*San Juan, February 7, 1907.* — After five hours of combat between the revolutionary forces and the government of the province, and with a view to avoiding unnecessary shedding of blood, and, furthermore, in view of the fact that the government finds itself deprived of the means of attending its wounded, the government hereby agrees to surrender to the revolutionists the police and prison barracks, with their respective arms and ammunition. The governor, his ministers, the chief of police, government employees, and all citizens who participated in the defense of the government are hereby assured of personal protection by the revolutionary junta." [1]

The president of the republic, Figueroa Alcorta, was at this time absent from Buenos Aires, and the president of the senate, Benito Villanueva, was acting president. He immediately called together the members of the cabinet. Federal intervention was at once determined upon, and the following decree was promulgated:

"In view of the occurrences in the province of San Juan, and in accordance with articles 5 and 6 of the national constitution, the provisional president of the senate, at present invested with the executive power, decrees, with the approval of the cabinet: The province of San Juan is declared in a state of 'intervention.' Lieutenant Colonel Ramon Gonzalez, in command

[1] This document was signed by the revolutionary junta on behalf of the revolutionists, and by the minister of government and the representatives of the governor, Victorino Orteza and Ventura Lloveras.

of the Fourth Infantry Battalion, is hereby appointed provisional chief of police. Until the federal commissioner in charge of the intervention is appointed, the minister of the interior will give instructions to the chief of police, above designated.

"At its next session the national congress shall be informed of this decree." (See article 6 as given in Appendix B, page 138.)

Prior to the issuance of this decree, the deposed governor, Manuel J. Godoy, telegraphed to the minister of the interior, requesting the intervention of the national government for the purpose of reëstablishing his authority in accordance with article 6 of the constitution, which gives to the federal government power to intervene in the provinces, "for the preservation in the territory of the provinces of the republican form of government, or for repelling foreign invasion; and when requested by the provincial authorities, for maintaining them in power or reëstablishing them if deposed by sedition or by invasion from another province."

The federal government decided to ignore the request of the governor, for compliance therewith would have compelled the decreeing of intervention for the sole purpose of restoring the deposed authorities. The acting president and his ministers took the ground that in the province of San Juan the republican form of government had been overthrown and that the situation therefore called for intervention much broader in scope.

A few hours after the issuance of this decree, a second decree was promulgated in the following terms:

ART. 1. Dr. Cornelio Moyano Gacitua, justice of the national supreme court, is appointed national commissioner in the province of San Juan.

ART. 2. The minister of war will issue orders with reference to the national troops to be placed at the disposal of the national commissioner.

ART. 3. The minister of the interior will issue instructions to the national commissioner.

ART. 4. The expenditures incident to the intervention shall be paid out of funds not otherwise appropriated.

The constitutional position assumed by the federal executive is clearly set forth in an official communication of the minister of the interior to the deposed governor in reply to a second request for federal intervention, for the purpose of restoring him to power. The reply read as follows:

"BUENOS AIRES, *February 12.*

"Señor MANUEL J. GODOY, *Governor of San Juan:*

"I have the honor to acknowledge your telegram of yesterday in which your excellency states the causes which, in your opinion, led to the revolution of the 7th instant, and in which you also point out the previous attempts of the same character. In this telegram you also request that the federal intervention be limited to reëstablishing the authority of the government.

"Your excellency's first requisition arrived some hours after the decree of intervention had been issued, whereas your second requisition is formu-

lated after order has been established in San Juan, as a direct result of this decree and the measures adopted by the federal government in pursuance thereof.

"The national executive is determined to use all the means at his command in order to assure domestic peace and order, and proceed with the energy and prudence which the circumstances require. In order to accomplish this purpose and, in pursuance of its undisputed authority, the federal government adopted the measures which have been communicated to you, and which it is proposed to carry to successful issue with unfailing integrity of purpose.

"Your excellency will pardon me if I refrain from entering upon an analysis of the considerations of public law contained in your telegram, especially in view of the fact that this is neither the time nor the place to enter upon such a discussion. The federal commissioner who has been appointed, and whose name is a guarantee of ability and impartiality, will carefully study the conditions of law and fact which will prepare the way for a decision of the question whether the deposed authorities shall be reestablished, or whether it is necessary to reorganize the government of the province.

"I will transmit to the federal commissioner a copy of your excellency's telegram, which will, no doubt, serve as one of the elements upon which his final judgment will be based.

"MANUEL A. MONTES DE OCA,
"*Minister of the Interior.*"

The national commissioner arrived at San Juan, the capital of the province, on February 15. The far-reaching powers vested in him clearly illustrate the power of the central government over the provinces in the Argentine system.

The formal instructions issued by the minister of the interior directed that "after a careful study of the facts and legal antecedents, the commissioner should decide whether the government overthrown by the revolution of February 7 should be reëstablished, or whether a partial or total reorganization of the provincial government should be undertaken." In the latter case he was authorized to declare such offices vacant as he deemed necessary, and proceed to fill them in accordance with the constitution and laws of the province.

It is evident at a glance that such an interpretation of article 6 of the constitution places the provincial government completely at the mercy of the federal authorities. In order to secure the support of the provincial authorities the federal government possesses this far-reaching power of intervention, which is a constant menace to the tenure of provincial governors.[1]

It would seem that the governor of San Juan having been duly elected and installed in office, the constitutional obligations of the federal government would have been duly fulfilled by giving effect to that portion of article 6 which makes it the duty of the federal govern-

[1] For a more detailed discussion of the dangers involved in this wide extension of the powers of intervention see Chapter VII.

ment, when requested by the provincial authorities, to intervene for the purpose of maintaining them in power or reëstablishing their authority if deposed by domestic violence or by invasion from another province.

Instead of adopting this course, the federal commissioner, acting under instructions from the minister of the interior, undertook an investigation, not only of the manner in which the governor had been elected, but also of the honesty and fairness of all elections for members of the provincial legislature held subsequent thereto. This investigation was undertaken, according to the federal commissioner, in order to ascertain whether a republican form of government really existed in San Juan, preparatory to determining whether or not the federal government should exercise the power conferred upon it by article 6, to guarantee to the province a republican form of government. As a result of this investigation, the federal commissioner arrived at the conclusion that although the governor had been duly and legally elected, there had occurred during his administration fraudulent practices in the elections for members of the provincial legislature. Such practices had, in his view, undermined the republican form of government and made it necessary to proceed to the election of new executive and legislative authorities.

On March 18 the federal commissioner issued a decree declaring vacant the governorship as well as all seats in both branches of the provincial legislature. The preamble to this decree contains a summary of the reasons upon which the commissioner based his conclusions. He said in part:

"Proceeding in accordance with my instructions, I made a careful and detailed study of the memoranda submitted by the governor and by the representatives of the opposition party, as well as of the documents and facts which I had collected. The examination of this data leads one to the conclusion that although the present provincial authorities may have been legally elected and organized, subsequent election abuses were so numerous that the republican form of government was in reality undermined when the recent revolutionary movement took place.

"From the evidence submitted it is evident that the estimable citizen who governed the province was not able or did not know how to prevent the election abuses, which had reached the most deplorable extremes in the preparation of the registry list and in the elections themselves held during the years 1906 and 1907, and especially those held on the 14th of March and the 25th of May, 1906. It is important to note that the authorities of the province, other than the executive, were also involved in these abuses.

"It is true that armed insurrections should be repudiated and condemned as a means of securing improved political conditions; but it is also true that it is the duty of the federal government, when it intervenes in a province, to protect the political rights of the citizen, and one of these rights is the free exercise of the suffrage, constituting, as it does, the basis of the representative system as provided by the constitution and laws. These are, therefore, the considerations of law and fact which serve as the bases for our decision. A more detailed analysis thereof will be made when our final report is submitted.

"In the province of San Juan it is absolutely necessary to restore the republican form of government in order that the people may as soon as possible elect the legally constituted authorities, who shall govern their destinies in peace and liberty.

"For these reasons the federal commissioner, in the name of the executive authority of the nation, decrees:

"ART. 1. That the incumbents of the executive and legislative offices of the province of San Juan, at the time of the insurrectionary movement of February 7, last, are herewith declared to have forfeited their offices, and new elections are hereby ordered.

"ART. 2. The manner and date of such elections will hereafter be determined, but such elections shall be held in conformity with the constitution and laws of the province.

"ART. 3. This decree shall be proclaimed and published in the official register."

(Signed) "C. MOYANO GACITUA, *Federal Commissioner.*
"JOSÉ A. FRIAS, *Secretary.*
"H. D. AGUIAR, *Secretary.*"

On the following day (March 19, 1907) the federal commissioner issued another decree, directing the holding of new elections for lieutenant-governor to serve the remainder of the term of the deposed executive, and for senators and representatives of the legislature. On March 20 and 21 further decrees were issued, prescribing details as to the manner of holding elections.

As was to be foreseen, the candidate of the opposition party was elected to fill the unexpired term. A year later the leader of the revolutionary movement, Colonel Sarmiento, was elected governor.

Viewed in its purely constitutional aspects, and without reference to the political purposes involved, the case of San Juan presents peculiar interest, because it illustrates so clearly the contrast between the constitutional practice in the Argentine Republic and in the United States. It is true that the Argentine constitution goes one step further than the constitution of the United States, in that it guarantees to each province (article 5) the free exercise and enjoyment of its political institutions. (See article 5, page 137.) This article was not invoked in the San Juan intervention, the entire proceeding being based on the provision of article 6, which is identical with article 4, section 4, of the constitution of the United States. In both cases the obligation is placed upon the federal government to guarantee to each constituent part of the federal system (states or provinces) a republican form of government. In the United States this has been construed to mean nothing more than a guarantee that the people shall "choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legislative acts may be said to be those of the people themselves." [1]

[1] *In re* Duncan, 139 U. S., 449.

In the Argentine a totally different view has been taken of the power which this clause confers on the federal government. Instead of drawing the line, as indicated in this decision, the thesis maintained and successfully enforced by the Argentine government has been that this guarantee involves far more than the right of the people to choose their own officers and to make laws through a representative assembly. It also includes the lawful conduct of elections, strict compliance with preliminary requirements in the formation of the registry rolls, and finally the guarantee of an accurate count of the election results.

In one sense it may be said that this interpretation of the constitutional clause is quite as reasonable as that sustained by the supreme court of the United States; but it is also true that it places in the hands of the federal government the power to reduce the provinces to a condition of political subordination. It is evident that if the national authorities interpret, as a requirement of a "republican form of government," that every elective officer shall hold office through an election entirely free from fraud or intimidation, there is no limit to the federal power of intervention. Judged by the standards applied in the case of San Juan, there is certainly no state of our union which would have escaped the intervention of the federal government at some time or other in its history. With such an interpretation the national government becomes not merely the guarantor of a republican form of government in the provinces, but also of its smooth operation and to a certain extent of the integrity of its political methods.

If the national government were able to keep itself aloof from partisan affiliations this guarantee would have real value. From the very nature of the situation this is impossible. The fact that the party in power in national affairs requires the political coöperation of the provincial governors makes irresistible the temptation to intervene for partisan purposes. It is for this reason that the federal intervention in the province of San Juan can not be fully understood if studied in its purely constitutional aspects. In order to form an opinion as to its real significance, the accompanying political conditions must be analyzed.

PART II.

THE ORGANIZATION AND PRINCIPLES OF THE FEDERAL SYSTEM.

CHAPTER IX.

THE POSITION OF THE EXECUTIVE.

No other portion of the Argentine political system has given rise to so much discussion as the position of the executive. This is due in part to the lack of clear and definite formulation of executive powers in the constitution and in part to the influence of deeply rooted political ideas and tendencies inherited from Spain.

The memories of arbitrary action by the Spanish viceroys created in the minds of the founders of the republic a marked distrust of executive power. It is not surprising, therefore, to find in the early revolutionary assemblies a well-defined reluctance to create a strong executive or even to vest one person with restricted executive power. The early attempts at political organization are all characterized by the formation of executive boards, "triumvirates," and other forms of multiple executive heads. The inefficiency and lack of definite policy resulting from this type of organization soon forced the reluctant acceptance of a single-headed executive. By resolution of January 22, 1814, the general constituent assembly decreed that all executive authority should be vested in one person. A few days later it was decided to give to the chief executive the title "supreme director of the united provinces." The immediate cause of the acceptance of a single-headed executive was the impossibility of an effective military organization under the "triumvirate" system. In the national constituent congress which assembled in Tucumán in 1816 and which made the formal declaration of independence of the country, there was no longer any question as to the desirability of a single executive head; this tendency was dictated in part by a fear of the reappearance of the old system of "boards" and "triumvirates" rather than a real adherence to monarchical principles.[1] The congress of Tucumán having been transferred to Buenos Aires, adopted December 3, 1817, the "provisional regulations for the direction and administration of the state." In these regulations the executive power was vested in a "director of the state," elected by the congress, with ample administrative powers. The history of the executive power between 1817 and the constitutional reorganization of 1829 presented a constantly increasing emphasis on executive power and finally led to the dictatorship of Juan Manuel Rosas, which lasted from 1829 to 1852. With the downfall of Rosas, in December 1852, Argentina entered upon a new period of constitutional development. In spite

[1] Letter of General San Martin to Laprida, cited by Del Valle, Derecho Constitucional, p. 327.

of the long period of dictatorship through which the country had passed, the convention that framed the constitution of 1853 gave evidence of an unexpected willingness to provide for a vigorous executive authority. It would have been natural after a long period of tyranny to find the new constitution filled with provisions intended to guard against possible abuses of power. The members of the convention were sufficiently clear-sighted to avoid the mistakes of the early constitutions of the republic and provided for an executive with far-reaching powers.

In order to understand the position of the executive in the Argentine political system, it is necessary to look beyond the written constitution and carefully observe the operation of the political mechanism. With one notable exception, the powers of the Argentine president as defined in the constitution are strikingly similar to those of the president of the United States. He is chosen for a period of six years under a system of indirect election, by which electors chosen by the people assemble for the purpose of selecting a president. The system has developed in precisely the same manner as in the United States — the people, although voting for electors, in reality select the candidate for whom they desire to cast their vote, the electors being in fact compelled to cast their votes for the candidate designated on the respective tickets. Reëlection can only take place after a presidential period has elapsed subsequent to the term for which he has been elected. The manner of election is provided for as follows:

"ART. 81. The election of the president and vice-president of the nation shall be made in the following manner: The capital and each one of the provinces shall appoint, by direct vote, an electoral college, consisting of twice as many members as the number of senators and deputies constituting their respective representation in congress, who shall have the same qualifications, and shall be elected in the same manner, as provided in the present constitution for the election of deputies.

"Deputies, senators, and officials receiving pay from the federal government shall be disqualified from acting as electors.

"Four months before the expiration of the presidential term, the electors chosen by the capital shall meet in the capital, and those chosen by the provinces in their respective capitals, and shall proceed to elect by signed ballots the president and vice-president of the nation, expressing in one ballot the choice for president and in another distinct ballot the choice for vice-president.

"Two lists shall be made of all the persons named for president and two others of those named for vice-president, with the number of votes cast in favor of each of them. These lists shall be signed by the electors and sent by them sealed, two (one of each kind) to the president of the provincial legislature, and in the case of the capital to the president of the municipality — to be filed and kept, with their seals unbroken, in their respective archives — and the other two to the president of the senate (for the first election, to the president of the constitutional convention).

"ART. 82. The president of the senate (for the first election, the president of the constitutional convention), having all the lists in his possession, shall

open them in the presence of the two houses. Four members of congress, selected by lot, shall, together with the secretaries, immediately proceed to count and announce the votes cast for each candidate for president and vice-president of the nation. Those receiving in each case an absolute majority of all the votes shall be immediately proclaimed president and vice-president.

"ART. 83. In case the vote is divided and no absolute majority can thus be obtained, congress shall elect one of the two persons who shall have obtained the greatest number of votes. If the highest vote obtained proves to be in favor of more than two persons, congress shall make its choice from among all of them.

"If the highest vote obtained proves to be in favor of only one person and two or more persons are favored with the next largest vote, the choice of congress shall be made from among all those who obtained the first and second highest votes.

"ART. 84. This choice shall be made by an absolute majority of votes, the votes to be verbal. If such majority is not obtained on the first ballot, a second vote shall be taken, restricting the vote to the two persons who shall have obtained the greatest number of votes on the first ballot. If the vote is equally divided, the balloting shall be repeated, but if it again results in an equal division, the president of the senate (for the first election the president of the constitutional convention) shall decide by his vote. The counting of the votes and the verifying of these elections shall not be made without the presence of three-fourths of all the members of congress.

The administrative powers of the president of the Argentine Republic are somewhat more extensive than those of the president of the United States. His powers of appointment are not only far greater, but most appointments are made without the advice and consent of the senate. This power has been the most important factor in giving to the president a dominant position in the Argentine political system and has enabled him to resist successfully all attempted encroachments of the legislative authority upon executive prerogative.

The one point upon which the framers of the constitution of 1853 insisted was that all acts and orders of the president be countersigned by one of his responsible ministers. Without such countersignature the orders of the president are void and without effect. This provision has had a far-reaching effect on the Argentine constitutional system, the precise nature of which has been the subject of interminable discussion on the part of jurists and publicists. Is the Argentine system of government presidential or parliamentary? It is no exaggeration to say that volumes have been written on this subject,[1] without arriving at any satisfactory conclusion or at least without arriving at any conclusion which has received general assent.

The question to which an answer should be given is not so much to ascertain the intent of the framers of the constitution of 1853 as

[1] See Funcion Constitucional de los Ministros, containing a series of essays by prominent publicists. Biblioteca Argentina de Ciencias Politicas, vol. 2, Buenos Aires, 1911.

to determine the nature of the political mechanism that has actually developed. The distinguishing characteristic of the position of the Argentine executive as compared with that of the president of the United States is to be found in articles 87, 88, and 89, which read as follows:

"ART. 87. Eight ministers or secretaries shall have charge of the affairs of the nation, and shall countersign and attest the acts of the president by means of their signatures; these acts shall not be valid without such countersignature. A special law shall determine the business of each department.

"ART. 88. Each minister is individually responsible for the acts signed by himself, and jointly with the other ministers for all acts agreed upon between him and his colleagues.

"ART. 89. The ministers shall not, in any case, take individual action on any subject, unless it concerns only the internal government of their own respective departments."[1]

From the earliest period[2] we find the founders of the Argentine political system insistent on the necessity of establishing executive responsibility through the countersignature of all presidential orders or decrees by a member of the cabinet, who thereby assumes the responsibility therefor. This plan was taken from the French constitution of 1791 (chapter II, section IV, article IV), which provides that no order of the king shall take effect unless countersigned by the minister of the respective department.[3]

In the Argentine political system, therefore, the cabinet ministers occupy a distinct constitutional position, whereas, as is well known, the constitution of the United States is silent on this point, the president alone assuming all responsibility for executive acts; a responsibility which, however, can only be enforced by impeachment proceedings.

Does this constitutional provision for ministerial responsibility mean that the Argentine system departs from the plan of presidential government and establishes either a parliamentary system or something approaching thereto?

Whatever may have been the intent of the framers of the constitution of 1853 — and there is no internal evidence to show that they were bent on establishing a system of parliamentary government — the fact is that the constitution does not make specific provision for such a system, nor has anything approaching a real parliamentary system developed during the six decades of constitutional growth. The causes are due in part to the political ideas inherited from Spain which have, in many cases, proved stronger than constitutional precepts and in part to certain peculiarities of national political life.

[1] An amendment of March 15, 1898, increases the number of ministers to eight, designated respectively as follows: interior; foreign affairs and public worship; treasury; justice; agriculture; public instruction; war; and navy.

[2] Reglamento Provisorio of December 3, 1817, and article 102 of the constitution of 1826. Matienzo, El Gobierno Representativo, p. 175.

The essence of the parliamentary system is the dominant position of the legislative authority, the executive being nothing more than a committee of the dominant party in the most popular branch of the national assembly. The head of the state, whether constitutional monarch or president, is merely the nominal executive who "reigns but does not govern."

Argentina inherited from Spain the traditions of a vigorous executive accustomed to act without consulting any other authority and dominating the legislative authority whenever brought into contact therewith. The idea of an executive subordinated to the legislative authority was completely foreign to Spanish ideas of the eighteenth century.

Throughout the nineteenth century the supremacy of the executive over the legislative authority has been characteristic of the political development of the country, both in the provincial and the federal governments. This fact alone would have been sufficient to overcome any tendency toward the establishment of parliamentary government, even if the constitution were more specific with reference to the relation of the executive to the legislative authority.

The subordination of the legislative to the executive authority in the actual operation of the political system of Argentina is evident, not only during the sessions of the national congress, but also in the relation of the president to the candidacy of persons desiring election as representatives. With the exception of the provinces in which the governor is a political opponent of the president, the candidates for members of the lower house are usually selected after consultation between the governor and the president or his representative. Thus, the president is assured of far-reaching influence in the congress. This influence is strengthened by the absence of well-defined national political parties, with definitely formulated principles and platform. The only exception to this rule is the socialist party, which, while increasing in strength, is not as yet an important factor in the political life of the nation. The personal character of all the important political groups makes it comparatively easy for the president, through a judicious distribution of patronage, to make them subservient to his will.

With the traditions of executive power reinforced by certain of the salient characteristics of Argentine political life, it is not surprising that the executive has established and maintained its hold over the legislative authority and that in such circumstances the development of parliamentary government has been impossible. The requirement that all executive acts shall be countersigned by a member of the cabinet has in no way diminished the real political power and influence of the president. The resignation of individual ministers takes place, as a rule, not as the result of a vote of lack of

confidence on the part of the congress, but because of differences of opinion with the president. In a few instances, ministers have resigned because of difficulties with the congress, such as the rejection of measures which they had fostered or the reduction of appropriations in their departments, but such resignations are traceable to personal considerations rather than to an acquiescence in the controlling power of the congress.

This dominant position of the executive in the Argentine political system is clearly shown when we compare the proceedings of the national congress with the congress of the United States. In the first place, in all matters relating to the budget the presumption is strongly in favor of the estimates submitted by the executive. During the extra session of 1914, owing largely to the fact that the country was passing through a severe financial crisis, the budget commission of the congress took greater liberties with the executive estimates than at any time in the recent legislative history of the country, but this was due, in the main, to the necessity of effecting a readjustment of expenditures to the diminished income of the public treasury.

In the ordinary course of legislation the most important measures are usually prepared by the executive and submitted to the congress with a report in which the views of the president are set forth. It is also customary for the minister to whose particular department the legislation in question belongs to appear in both houses in order to explain and defend the measure.

The constitutional provisions giving to the congress the power to call cabinet ministers for the purpose of securing explanations of measures or of any matters relating to their respective administrative departments have not served to strengthen the hold of the congress on the executive. It has been used at times to annoy the president and his ministers, but has not been a weapon sufficiently powerful to force the resignation of a cabinet. On the other hand, it has served a most useful purpose in keeping the legislative authority in closer touch with the executive than would otherwise have been possible.

As regards the cabinet itself, the president is entirely free in his choice. He may select the members from the political party to which he owes his election, or he may endeavor, as several presidents have done, to use the cabinet as a means of reconciling or consolidating elements which have not been entirely concordant, with a view to strengthening the political support of his administration.

Of the eight ministers constituting the cabinet, it has been the custom of successive presidents to select half from the provinces and half from the city of Buenos Aires. In selecting ministers from the provinces, however, no attempt has been made at sectional representation,[1]

[1] Article of Ruiz Moreno in symposium entitled "Funcion Constitucional de los Ministros," p. 8.

the purpose being rather to assemble in the cabinet the several political elements which will assure greatest prestige to the administration.

It will be seen from the foregoing description that the Argentine system is essentially presidential, both because of the relation of the cabinet to the congress and because of the independent position of the executive. Whatever they may in time become, at the present day the cabinet ministers are nothing more than personal advisers to the president and heads of executive departments.

Independent of the constitution and in many cases in violation of its spirit, if not of its letter, there have developed certain executive practices in Argentina which further indicate the dominant position of the executive and which have at the same time given to the cabinet an importance which it would not otherwise have attained. I refer to the so-called "Acuerdos de Gabinete," by which is meant a cabinet meeting called by the president at which action is taken on matters submitted by the president. These meetings have undertaken to make appropriations not provided for in the annual budget and thus to remove from the congress the real control of the national finances. Against this practice there has been no lack of protest, but to no avail. The result has been to burden the country with expenditures far in excess of those provided for in the annual budget as voted by the congress. It also is evident that this power, nowhere contemplated in the constitution, not only places a dangerous weapon in the hands of the executive, but enables him to make serious inroads on the most important power of the national congress, namely, the control over national finances.

As regards the relations existing between the president and the congress, it may be said that these relations have usually been entirely cordial, due in part to the extra-constitutional influence exerted by the executive, which in most cases has assured a docile congress. When differences have occurred, the president usually has been victorious. In cases of acute conflict, such as occurred in 1908, the executive resorted to the extreme measure of closing the congress peremptorily, enforcing the decree through the use of the military arm and declaring the budget of the preceding year to be in force.

The possibility of resorting to such extreme measures successfully is strengthened in Argentina by the fact that the political ideas of the people inherited from Spain lead them instinctively to support the executive as against the legislative authority. It is to the executive that the people look for the great reforms. The influence which he can exert is well illustrated in the recent administration of President Roque Saenz Peña, who went into office with the avowed purpose of eliminating the fraud, intimidation, and bribery which for so many years had characterized both the national and the local elections. He forced through the congress an election law which

made voting obligatory and at the same time attempted to assure the secrecy of the ballot. The effect was immediately apparent. Political elements hitherto having been denied representation were successful in electing their candidates, thus bringing into the congress new and independent forces which already have shown their influence in giving to the national legislature a degree of freedom from executive control which marks a new epoch in the political development of the republic.

It is altogether likely that with the growth of a more vigorous political life, with the secrecy of the ballot and freedom of suffrage assured, the confidence of the people in the congress will be strengthened. This will probably bring about a weakening of the position of the executive or at least a limitation of the extra-constitutional powers which it now exercises.

CHAPTER X.

THE LEGISLATIVE AUTHORITY.

One of the most difficult tasks of the foreign student of Argentine institutions is to determine with any degree of precision the influence of the national congress in shaping the political destinies of the country. The constitution gives to the legislative authority powers quite as ample as those granted to the congress by the constitution of the United States. Nevertheless, for reasons explained in part in the preceding chapter, the congress has been a relatively subordinate factor in the political mechanism of the Argentine system. The explanation is not to be sought in any failure of the constitution to grant ample powers, but rather in the Spanish tradition of executive supremacy combined with a certain lack of confidence of the people in the earnestness of purpose of the national legislature.

Whatever may have been the virtues of the early legislative assemblies, inspired by the patriotic fervor of the revolutionary period, the record of achievement since the adoption of the constitution of 1853 has not been such as to command the confidence of the masses. In the first place the legislative history of the country, until a very recent period, shows a singular indifference on the part of the congress to measures designed to improve the condition of the working classes. Such measures as have been passed have been due to the zeal of cabinet ministers. Until the rise of the socialist party (1901), which, although small in number, is making its influence felt in the lower house, the congress gave but little attention to the welfare of the laboring classes.

Until very recently the voters have shown but little interest in the congressional elections and but a comparatively small percentage has participated therein. That a real and vital interest can be aroused when the people have confidence in the honesty of elections is attested by the extraordinarily active participation in the national elections of 1912, the first to be held under the new election law, which assured secrecy and a fair count. It is true that the law also provided for obligatory voting, inflicting a penalty of 10 pesos (about $4.40) for a first offense in failing to vote without good cause and 20 pesos ($8.80) for a second offense. There was a general belief, however, that this penalty would not be enforced, as in fact it has not been. It is not likely, therefore, that the obligatory voting clause perceptibly increased the number of votes cast. The guarantees for secrecy and honesty of count were sufficient to arouse an extraordinary interest in the election. Campaigning was carried on with a zeal heretofore unknown

in the political history of the country. The results of the election indicate not only an unprecedented participation of the electorate, but also the rejection of many candidates who, in former elections, were assured of success because of the mere fact that they enjoyed the support of the national executive.

National elections of 1912.

	Registered.	Vote cast.	Percentage of votes cast to voters registered.
Capital, federal	126,303	106,157	84.05
Provinces.			
Buenos Aires	232,000	153,602	66.21
Córdoba	99,929	55,460	55.49
Santa Fé	98,371	74,383	75.60
Tucumán	70,815	39,891	56.33
Entre Ríos	63,184	41,602	65.84
Corrientes	53,485	39,897	74.59
Mendoza	38,500	24,467	63.55
Santiago del Estero	35,261	23,136	65.64
Salta	26,627	15,745	59.13
San Luis	22,187	16,442	74.11
San Juan	21,111	17,580	83.26
Catamarca	18,332	12,434	67.83
La Rioja	15,916	11,596	72.86
Jujuy	12,380	8,460	68.34
Total	934,401	640,852	68.58

Owing to the fact that neither house of the Argentine congress is renewed at any time *in toto*, the elections of any one period can not fully reflect the state of public opinion. The elections of 1912 would have had a far deeper influence on the tone and spirit of the chamber of deputies if the renewal of membership had been complete. But even this partial renewal has served to introduce new elements into the lower house which have had a real influence on the character of legislation, but especially on the attitude of the people toward the congress. Since the beginning of the regular session of 1913, the public has evinced a more sustained interest in the debates than at any previous period in the history of the country. Had it not been for the severe financial and commercial crisis through which the country was then passing, it seems quite certain that the many important social problems awaiting legislative solution would have received attention. At all events, it is evident that if the elections continue to be safeguarded with the same care and zeal as was the case in 1912, the position of the congress will be considerably strengthened.

The members of the lower house of the Argentine congress — the chamber of deputies — are elected by direct popular vote, the constitution prescribing [1] that there shall be one representative for every

[1] Article 37, as amended March 15, 1898.

33,000 inhabitants. The qualifications for electors are determined by federal law. Every male citizen 18 years of age is entitled to vote except the following:

(*a*) Adjudged lunatics living in their respective homes.
(*b*) Deaf mutes unable to write.
(*c*) Priests living in religious communities.
(*d*) Persons under arrest.
(*e*) Inmates of lunatic asylums and poor-houses.
(*f*) Persons convicted a second time of offenses against property (for a period of five years after such second conviction).
(*g*) Persons convicted of perjury or of violations of the election law (for a period of five years after such conviction).
(*h*) All persons declared by judicial decree to be incapacitated to hold public office.
(*i*) Fraudulent bankrupts until their discharge in bankruptcy.
(*j*) Those convicted of misuse of trust funds until restitution of such funds has been made.
(*k*) All persons serving a term of imprisonment, during the period of the sentence.
(*l*) All persons who have attempted to evade military service until they have submitted to the penalty for the violation of the law relating to universal military service.
(*m*) All persons expelled from the army and deserters for a period of ten years after conviction for the offenses involved.
(*n*) All persons convicted of misappropriation of public funds, until the amounts involved have been returned to the public treasury.
(*o*) Proprietors and managers of houses of prostitution.

Under the Argentine election law, registry is obligatory. This is due to the fact that such registry is used primarily for the enforcement of universal military service. Within three months after having reached the age of 18 years every native-born or naturalized citizen is required to present himself to the municipal authorities, where such exist, or to the justice of the peace in the rural districts, for purposes of enrollment. Failure to do so involves heavy penalties, ranging from a fine to a year's additional military service.

In spite of the conscientious effort made to improve the election law, the mechanism of voting, when judged by modern standards, is singularly defective. The official ballot is unknown, each party supplying ballots which the voter takes with him or secures after entering the voting booth. The multiplicity of ballots is exceedingly confusing, especially to the ignorant voter. Furthermore, it tends to facilitate the purchase of votes by enabling election agents to supply the ballots to venal voters. When voters are supplied with ballots by party representatives, rather than compelled to make their selection of candidates from an official ballot, the real freedom of choice is greatly restricted, as was evident in the election for members of congress held under the new election law in May 1914.

In the selection of members of the lower house the recent election

law introduced a system of minority representation under which the voter selects a certain proportion of the candidates listed on a general ticket, in accordance with Table A, column 1, which shows the number of deputies to be elected, while column 2 shows the number of candidates for whom the voter is permitted to cast ballot.

The total number of members of the lower house is at present 120, distributed as shown in Table B.

TABLE A.

Col. 1.	Col. 2.
1	1
2	2
3	2
4	3
5	4
6	4
7	5
8	6
9	6
10	7
11	8
12	8
13	9
14	10
15	10
16	11
17	12
18	12

TABLE B.

Province or city	No.
City of Buenos Aires	20
Province of Buenos Aires	28
Santa Fé	12
Entre Ríos	9
Corrientes	7
Córdoba	11
San Luis	3
Santiago del Estero	5
Mendoza	4
San Juan	3
La Rioja	2
Catamarca	3
Tucumán	7
Salta	4
Jujuy	2

The organization of the upper house or senate is governed by article 46 of the constitution, which reads as follows:

"The senate shall consist of two senators from each province elected by a plurality of votes by the respective legislatures. There shall be also two senators for the capital, who shall be elected in the same way as the president of the nation. Each senator shall have one vote."

The qualifications for members of the senate differ from those of the house. For membership in the lower house there are but two requisites, namely, an age requirement of 25 years and the possession of Argentine citizenship for a period of at least four years. Senators, on the other hand, must be 30 years of age, have been citizens of Argentina for at least six years and have an annual income of not less than 2,000 "pesos fuertes" ($1,941).

The senate is composed of two members from each province elected by the legislatures thereof and two members from the capital city (Buenos Aires) elected in the same manner as the president, namely, by the election of electors, who, in their turn, select the two senators. The term of office is nine years, the constitution providing for a renewal of one-third of the senate every three years.

Although the Argentine senate has been honored by the member-

ship of a long line of distinguished men, the body as a whole has never been able to secure for itself an important position in the Argentine political system. We have had occasion several times to refer to the subordinate position of the legislative authority. Not only does the power of the senate suffer because of this fact, but its influence is further reduced by reason of the greater confidence of the masses in the lower house. The fact that the provincial legislatures are often under the dominion of the provincial governors and that the latter usually enjoy the privilege of selecting the candidates whom the legislature is to elect, has gradually created a deeply rooted conviction that the senate is an oligarchic body far removed from the currents of public opinion and impervious to its influence.

The special powers granted to each house separately are comparatively few. To the chamber of deputies belongs the exclusive power to originate revenue measures and measures relating to military conscription. To it also belongs the exclusive power to institute impeachment proceedings against the president, vice-president, and members of the cabinet, against members of both houses, justices of the supreme court, and provincial governors. The constitution provides (article 45) that such articles of impeachment may be formulated for treason, bribery, misuse of public funds, violation of the constitution, or other offense involving punishment by death or long period of penal servitude. The articles of impeachment as formulated must receive the approval of two-thirds of the members present.

To the senate belongs the exclusive power of trying such impeachments. When organized as a tribunal for this purpose, the chief justice of the supreme court presides; a vote of two-thirds of the members present is necessary for conviction. It will be noted that the procedure provided for in impeachment proceedings is identical with that prescribed by the constitution of the United States.

As regards the sessions of the congress, the constitution provides that a regular session shall be held each year, beginning May 1 and ending September 30 (article 55). The president may, however, either extend the regular session or convene the congress in extra session. Whether extending the regular session or convening in extra session, the executive has steadfastly maintained that the congress must limit itself to the purposes for which convened. As is well pointed out by Matienzo,[1] this unusual limitation on the legislative authority when a regular session is extended gives to the president far-reaching powers of control when the congress fails to complete its legislative program at the regular session. As this is of almost constant occurrence, the executive is in a position to force upon the attention of the legislative authority the measures which it desires to see enacted. As a rule, what occurs at the sessions of the Argentine

[1] El Gobierno Représentativo. *Op. cit.*, p. 186.

congress is that the early months are devoted to a general discussion of pending measures exclusive of the appropriation bills and the end of the regular session arrives without final action on the budget. The usual procedure is the extension of the regular session for the sole purpose of considering the budget. Time and again the members of congress have requested the president to include other matters for possible consideration, but he has usually refused or has taken the position that after the voting of the budget he would consider the advisability of including other matters.

The legislative powers conferred on the congress contained in article 67 of the constitution are as follows:

"1. To legislate in regard to custom-houses, and to establish import duties, which, as well as the rates of appraisement on which they are based, shall be uniform throughout the nation; it being thoroughly understood, however, that these duties and all other taxes of national character are payable in the currency of the respective provinces in their exact equivalent value. And, to establish likewise export duties *up to 1866, at which time they shall cease to be either national or provincial taxes.*[1]

"2. To levy direct taxes for a period of time and in a manner proportionately equal throughout the territory of the nation, whenever the defense of the country, the common safety, or the public good may require it.

"3. To borrow money on the credit of the nation.

"4. To provide for the use and disposition of the national lands.

"5. To establish and organize at the capital a national bank, with branches in the provinces, with power to issue bank notes.

"6. To make arrangements for the payment of the national debt, both foreign and domestic.

"7. To appropriate annually the money necessary to meet the expenditures of the national government, and to approve or disapprove the accounts of its disbursement.

"8. To grant subsidies, to be paid out of the national treasury, to those provinces whose revenues, according to their budgets, are insufficient to meet their ordinary expenses.

"9. To regulate the free navigation of the rivers in the interior, to declare as ports of entry those which may be deemed fit for that purpose, and to establish or abolish custom-houses. But the custom-houses for foreign commerce, existing in each province at the time of its coming into the national union, shall not be abolished.

"10. To coin money, fix the value thereof and that of foreign coins, and adopt a uniform system of weights and measures for the whole nation.

"11. To enact civil, commercial, penal, and mining codes without encroaching upon the local jurisdictions, the provisions of said codes to be enforced either by the federal or provincial courts, according as the matters or persons may fall under their respective jurisdiction, and especially to enact general laws on naturalization and citizenship for the whole nation, based upon the principle of citizenship by nativity, as well as laws on bankruptcy, counterfeiting of money and forging of public documents of the state, and on the establishment of trial by jury.

"12. To regulate commerce by land and sea with foreign countries, and among the provinces.

[1] Words *in italics* stricken out September 12, 1866.

"13. To establish and regulate the post-offices and post-roads of the nation.

"14. To settle finally the national boundaries, to fix those of the provinces, to create new provinces, and to provide by special laws for the organization, administration, and government of the national territories, which may be left outside the limits assigned to the provinces.

"15. To provide for the security of the frontiers and for the preservation of peaceful intercourse with the Indians, and to promote their conversion to Catholicism.

"16. To provide for all that conduces to the prosperity of the country, to the advancement and welfare of all the provinces, and to the advancement of the enlightenment of the people, by prescribing plans for general and university instruction and by promoting industrial enterprise, immigration, the construction of railways and navigable canals, the colonization of the public lands, the introduction and establishment of new industries, the importation of foreign capital, and the exploration of the interior rivers, by protective laws for these purposes, by concessions of privileges for a limited time, and by rewards which shall act as an encouragement.

"17. To establish courts inferior to the supreme court of justice; to create and abolish offices and to fix the duties of the same; grant pensions, decree honors, and to grant general amnesties.

"18. To accept, or refuse to accept the reasons assigned for the resignation of the president or vice-president of the republic, to declare that the time has arrived to proceed to a new election, to count the returns thereof, and to ascertain the result.

"19. To approve or reject treaties concluded with other nations, and the concordats entered into with the Apostolic See, and to make rules for the exercise of ecclesiastical patronage throughout the nation.

"20. To admit into the territory of the nation religious orders in addition to those now existing.

"21. To authorize the executive power to declare war or make peace.

"22. To grant letters of marque and of reprisal and to make rules concerning prizes.

"23. To fix the strength of the land and naval forces in times of peace and of war, and to make rules and ordinances for the government of such forces.

"24. To authorize the calling out of the militia of the provinces whenever the execution of the laws of the nation, the suppression of insurrections, or the repelling of invasions may render it necessary. To provide for the organization, equipment, and discipline of such militia, and for the administration and government of the part thereof which may be employed in the service of the nation, leaving to the provinces the power to appoint the proper chiefs and officers of their respective militias, and to enforce in regard to them the discipline established by congress.

"25. To permit the introduction of foreign troops into the territory of the nation, and the departure therefrom of the national troops.

"26. To proclaim a state of siege in one or more places in the nation in case of internal disorder, and to approve or suspend the state of siege declared during the recess of congress by the executive power.

"27. To exercise exclusive legislative power throughout the territory of the national capital and in all other places acquired by purchase or cession in any province for the construction of forts, arsenals, magazines, or other useful establishments of national utility.

"28. To make all laws and regulations which shall be necessary for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the Argentine nation."

An examination of the powers thus conferred shows a striking similarity with section 8, article I, of the constitution of the United States. Comparing the two instruments, it will readily be seen that the Argentine constitution confers wider powers, emphasizing the nationalization of legislation to a greater extent than the constitution of the United States. This is particularly noticeable in the provisions granting to the congress the power to enact national, civil, commercial, mining, and penal codes.

In studying the Argentine political system one is impressed with the fact that the most urgent need of the country is the development of an organic national public opinion. Both houses of congress contain many able men and the level of debate is probably as high as in any representative assembly of Europe or America. The absence of an organized national public opinion robs the assembly of that cohesion and control which the formation of great national political parties would facilitate. There are abundant signs, however, of a healthful reaction against this state of affairs. Recent years have witnessed several attempts at the formation of national political parties with platforms which include something more than vague expressions of general principles. Concrete problems of national importance are entering into these platforms.

The primary difficulty is the indifference of the mass of voters. Outside of Buenos Aires and a few of the larger urban centers, the people are but beginning to take an active, sustained, and consecutive interest in public affairs. Fortunately, the rising generation is giving evidence of an awakening of civic pride which is certain to have a far-reaching influence on the political life of the country, preparing the way for the development of national political parties, which will address themselves to the pressing economic and social problems confronting the country.

CHAPTER XI.

THE JUDICIARY.

The position of the judiciary in the Argentine political system has received but little attention from commentators and publicists; yet there is probably no other portion of the system which has received so much attention on the part of travelers and foreign commentators. There has been for many years a widespread belief that the minor judiciary (especially the justices of the peace in the several provinces) was subject to political and personal influences. There is no doubt that this belief has been one of the factors discouraging immigration. Accounts of grave injustices done to settlers and of long delays in securing titles to their lands have made a deep impression on foreign opinion.

Nor is this impression dispelled in speaking with the people of the country. Pervading their comments on the judiciary there runs a note of pessimism, which serves to strengthen the conviction that whatever the merits of the executive and legislative branches of the Argentine system, the judiciary fails to command the complete confidence of the masses. It is only after long-continued acquaintance with the details of judicial organization and procedure that one becomes convinced of the injustice of this estimate. It soon becomes clear that a considerable portion of the present criticism of the judiciary relates to a period which the country has happily outgrown — a period in which the minor judiciary was completely subservient to a despotic executive. One begins, furthermore, to see that these sweeping statements overshoot the mark, including within their denunciation both the healthy and the weak portions of the system.

In any examination of the Argentine judicial system it must always be borne in mind that neither the historical background of Spanish tradition nor the early political development of the country gives evidence of the existence of an independent judicial authority sufficiently strong to assert itself as against the executive. On the contrary, the history of Spain during the eighteenth century is a record of the complete subordination of the judiciary to executive control. The problem confronting the people of Argentina was totally different, therefore, from that with which the people of the United States had to deal. In the course of the eighteenth century the English courts had succeeded, after a long struggle, in emancipating themselves from the direct control of the crown and had become the guardians of the liberties of the people as against executive tyranny.

The United States, therefore, inherited a system in which the foundations for the development of an independent judiciary had been laid. In spite of this fact, a long struggle between the executive and the judiciary ensued which for a time placed the prestige of the latter in serious peril. Viewed in this light, it is not surprising to find the early history of Argentina replete with instances of judicial subservience, but it is equally true that the last twenty-five years have witnessed marked changes both in the character of the judges and in their attitude toward executive interference.

The organization and jurisdiction of the federal judiciary[1] follow closely the plan outlined in the constitution of the United States. Article 94 of the Argentine constitution is similar to section 1, article 3, of the constitution of the United States. It provides that: "The judicial power of the nation shall be vested in a supreme court of justice and in the inferior tribunals which the congress may establish within the national territory." The constitution of 1853 (article 91) provided for a supreme court of nine justices, but an amendment passed in 1860 broadened the discretionary power of congress with reference to the number of justices. Pursuant to the powers thus granted the Argentine congress has established, in addition to the supreme court, district courts and federal courts of appeal. The judges of all these courts hold office during good behavior. The ability of the federal judges is, as a rule, of a considerably higher order than that of the provincial judges. This is due to greater care in selection, to the greater professional distinction that attaches to a federal judgeship, to the greater stability of tenure, and to the better salaries paid the federal judiciary. The people also show far greater confidence in the integrity of the federal judiciary. The people of Argentina are accustomed to indulge in unsparing criticism of public officials and there are constantly afloat rumors with reference to the approachability of this or that judge. It is exceedingly difficult for a foreigner to judge of the value of such rumors. The impartial inquirer soon reaches the conclusion that most of these rumors have no real foundation in fact and that the federal judiciary, with a few unfortunate exceptions, deserves the confidence which it now enjoys.

As regards the jurisdiction of the federal courts, the constitution of 1853 went far beyond the constitution of the United States. In article 97 it gave to the federal courts cognizance not only of all controversies included within section 2, article 3, of the constitution of the United States, but added thereto four important classes of cases, namely:

1. Those arising between the authorities of a province.
2. Those arising between a province and any of its citizens.

[1] *Cf.* the valuable work recently published by Borchard, "Bibliography and Guide to Argentine law."

3. Appeals from the ecclesiastical courts which at the time of the adoption of the constitution enjoyed jurisdiction over cases involving marriage and separation proceedings.
4. All cases arising under the national civil, commercial, penal, and mining codes.

It will be remembered that during the first seven years after the adoption of the constitution of 1853 the province of Buenos Aires maintained its independence of the confederation and that the national convention of 1860 was called for the purpose of determining the conditions under which this province should be incorporated into the union. The situation was a critical one and involved nothing less than the political future of the country.

At this convention the delegates of the province of Buenos Aires made three demands with reference to the jurisdiction of the federal courts as conditions prerequisite to its entry into the union. In the first place they demanded that the procedure with reference to all cases arising under the national codes be determined by the provinces and that the jurisdiction thereunder be assigned to the provincial courts; secondly, that the federal tribunals should not be permitted to take cognizance of disputes arising between the public authorities of the provinces; and thirdly, that the provision with reference to appeal to federal tribunals from the decisions of ecclesiastical courts be eliminated. Not only were all these proposals accepted, but the convention went one step further and removed from the jurisdiction of federal tribunals all cases arising between a province and its citizens.

The former article 97 of the constitution, now article 100, after the acceptance of these amendments, reads as follows:

"The supreme court and the inferior courts of the nation shall try and decide all cases, not enumerated in clause 11 of article 67, which arise under the provisions of this constitution, the laws of the nation, or treaties with foreign powers; in cases concerning ambassadors, public ministers, and foreign consuls; in cases of admiralty and maritime jurisdiction; in controversies to which the nation is a party; in cases which arise between two or more provinces, between one province and citizens of another province, between citizens of different provinces, and between a province or its citizens and a foreign state or its citizens."

With reference to the jurisdiction over cases arising under the national codes, the amendment provides that the existence of such codes shall not be construed to remove cases arising thereunder from the jurisdiction of the provincial courts, but that all questions of jurisdiction as between federal and provincial courts be determined by the status of the parties to the suit or of the matter in litigation. If, for instance, a case arises under the civil code between citizens of different provinces or between citizens of a province and an alien, recourse may be had to the federal courts, but if the same suit arises

between citizens of the same province the provincial courts alone can take cognizance.

The amendments adopted in 1860 have been severely criticized by many of the leading publicists, who point out that the jurisdiction of the provincial courts over cases arising under the national codes has destroyed the possibility of securing uniformity in interpretation and, owing to a widespread lack of confidence in the provincial courts, has served to make these codes less effective than they otherwise would have been. Every student of the Argentine political system must be impressed with the justice of the criticism. Furthermore, the removal from federal jurisdiction of cases arising between a province and its citizens has worked serious injustice in a great number of instances because of the difficulty of enforcing claims against a province in the local courts, where a removal to the federal forum would assure impartial consideration of the matter in dispute.

All the changes above referred to are traceable to the reaction against the nationalizing tendencies of the constitution of 1853, which took place at the time of the incorporation of the province of Buenos Aires into the union. This tendency was further emphasized a few years later (act of September 14, 1863) by a successful attempt to remove from federal jurisdiction one of the most important classes of cases deeply affecting the business interests of the country. Profiting by the then prevailing spirit of sectionalism, this law placed bankruptcy proceedings within the jurisdiction of the provincial courts. The legal provisions relating to bankruptcy, instead of being made the subject of a special law as contemplated by the constitution (article 67, section 11) are contained in the commercial code.[1] In the absence of a national bankruptcy act, it was within the power of the congress to place these matters under the jurisdiction of the provincial courts, although the commercial interests of the country suffered thereby. In one provision, however, the law goes beyond the constitutional powers of congress, namely, in giving to the provincial courts jurisdiction in bankruptcy proceedings irrespective of the nationality or domicile of the parties thereto. This is plainly in contradiction with the provision of article 100, which gives to the federal courts jurisdiction in suits arising between citizens of different provinces. It is generally agreed that the only effective remedy for the present unsatisfactory situation is the passage of a national bankruptcy act with exclusive jurisdiction in the federal courts.

The provincial courts, taken as a whole, represent the most unsatisfactory portion of the Argentine political system. This is particularly true of the minor judiciary — the justices of the peace and the courts of first instance — which concerns most closely the

[1] Matienzo, El Gobierno Representativo, *op. cit.*, p. 319.

security and welfare of the mass of the people. The political considerations which determine the appointments, together with the low salaries attached thereto, make it impossible to secure men of the high standing which the positions require. The situation is further complicated by the attempts in certain of the provinces to exert executive pressure on the courts. The immediate remedy would seem to be the extension of the jurisdiction of the federal courts, but it is hardly likely that the spirit of sectionalism will be sufficiently overcome to make this possible. As commercial and industrial interests grow in importance, the present anomalies of judicial jurisdiction are certain to disappear. But even after the improvement of the jurisdictional division between federal and provincial tribunals, there will remain in the provincial courts most of the cases affecting the rights of the masses.

As regards the procedure both in the federal and provincial courts, one can not help but regard it as exceedingly cumbersome when compared either with American or European practice. There is practically no oral procedure; everything must be reduced to writing, including the testimony of witnesses. Every page of testimony in civil cases must be written on stamped paper, furnished by the government at the rate of 44 cents per page. In civil suits, the burden of expense on the poor is so heavy that they are often compelled to suffer injustice rather than hazard the little they have by embarking on a lawsuit. In criminal cases the long and cumbersome procedure is the cause of much unnecessary delay. Trial by jury is unknown and the judge is compelled to reach a decision through the reading of a great mass of depositions. In many cases he has never seen the witnesses whose testimony he is called upon to consider, and is, therefore, unable to weigh properly the personal equation entering into the situation. Testimony in criminal cases, in fact the entire preliminary preparation of a case, rests with a judge of first instance, known as the "juez de instruccion," who prepares what is designated as the "sumario" of the case. Before him the accused is taken immediately after his arrest, and before he has had the benefit of counsel is submitted to a most searching interrogatory. He is then confronted with such witnesses as the judge is disposed to call. During the period immediately following arrest, ranging from 24 to 72 hours, according to the discretion of the "juez de instruccion," the accused is not permitted either the benefit of counsel or allowed any communication whatsoever with the outside world. After this period of "incomunicado" expires his counsel may call witnesses, who are examined by the judge. In all these proceedings the prosecuting attorney, as well as counsel for the defense, plays a subordinate part, every step in the proceeding being directed by the court. The case having been thus fully prepared, all the papers are forwarded to the

judge of the criminal court, who may call further witnesses or recall those whose testimony is before him.

The impression gained in talking with Argentine judges and jurists is that they are unalterably opposed to the introduction of trial by jury, which they believe would lead to a complete breakdown in the administration of the criminal law. They point to the unpreparedness of the people for such a system and are convinced that with a jury it would be impossible to secure convictions. In the rural districts trial by jury would, in their opinion, lead to factional feuds and become a mere mockery of justice.

In spite of this markedly conservative attitude of both bench and bar, it is clear that the simplification of both criminal and civil procedure and the introduction of oral proceedings in criminal prosecutions would subserve the ends of justice. Probably the greatest immediate need in the administration of justice in Argentina is a simple, rapid, and inexpensive procedure in civil suits when the amount in controversy is relatively small. The great strides made in this respect in Europe and in the United States have had no echo in Argentina. The present cumbersome, expensive system weighs heavily on the small creditor, depriving him of the means of effectively asserting his rights.

The question of the attitude of the courts toward the constitutionality of statutes has received but little attention from Argentine commentators. It has been taken for granted that in this respect the courts would follow a course similar to that taken by the judiciary in the United States. It is surprising, therefore, to find so few instances in Argentine jurisprudence in which the courts have undertaken to declare unconstitutional either the acts of the congress or those of the provincial legislatures. It is true that the federal supreme court has not hesitated to announce its adherence to the jurisprudence of the supreme court of the United States and in a number of notable instances to declare acts of congress unconstitutional. One is impressed, however, with the fact that compared with the United States these declarations of unconstitutionality are rare and exceptional.

The explanation is to be found in the reluctance of the citizen to institute proceedings involving a declaration of unconstitutionality. The respect for authority, inherited from Spain, is so strong that the citizen prefers to abide by the law rather than test its constitutionality. It is also true that the provincial courts have shown great reluctance to declare acts of the provincial legislatures null and void. This is due, in part, to the fact that the exercise of such a power is unusual in countries of Spanish tradition and in part to the influence which the provincial executive exerts over the judicial department of the government.

CHAPTER XII.

CONSTITUTIONAL GUARANTEES TO PERSON AND PROPERTY.

It is an interesting fact, throwing considerable light on conditions existing immediately before the movement for emancipation from the mother country, that one of the first measures adopted by the provisional government established after the first revolutionary movement was to provide protection for the personal rights of the citizen. The regulations of October 22, 1811, promulgated by the revolutionary junta, were aimed at the greatest abuse of the colonial régime, viz., arbitrary imprisonment. Article 9 of these regulations established a kind of habeas corpus proceeding through a direct appeal to the junta by any person detained for a period in excess of forty-eight hours.

The various so-called statutes and provisional regulations which preceded the earliest written constitutions of the republic laid special emphasis on the protection of personal and property rights. As early as 1811 (November 22) a provisional statute was promulgated intended to assure the liberty of the press. In fact, this statute simply reproduced the text of a decree of October 26 of the same year.

On November 23, 1811, the junta issued a decree placing further safeguards about the liberty of the individual. Unfortunately, the established administrative practice was such that these safeguards proved of little avail when subjected to the stress and strain of those troublous times. The wide gap between precept and practice did not diminish the desire to formulate an increasingly elaborate series of provisions intended to safeguard the rights of the citizen.

In his work on "Constitutional Guarantees," [1] Alcorta points out that the statute of May 5, 1815, contained a special chapter intended to safeguard individual rights and freedom of the press. The same purpose was manifest in the provisional regulations of December 3, 1817, sections 4 and 7 of which contain elaborate provisions, intended to prevent arbitrary action by administrative officials.

With the first formal constitutional organization of the country in 1819, the question of constitutional guarantees assumes a position even more important than during the preceding period. Under the inspiration of the elaborate declaration of rights contained in the French constitution, the framers of the constitution of 1819 devoted

[1] Las Guarantias Constitucionales, by Amancio Alcorta. Buenos Aires, 1897.

an entire chapter to personal rights relating to "life, reputation, liberty, security, and prosperity." In the constitution of 1826 [1] the provisions of the constitution of 1819 relating to personal and property rights were reproduced with a few minor amendments. The constitution of 1853, with the amendments of 1860, preserves the general plan of constitutional guarantees introduced in 1819.[2]

In every discussion of constitutional guarantees the question that first presents itself is the nature of the mechanism placed at the disposal of the citizen to prevent arbitrary arrest or detention, and the remedies at his service when such detention does take place. Does the Argentine system provide for a procedure similar or comparable to the habeas corpus of British and American jurisprudence?

The national constitution makes no mention either of habeas corpus or other procedure to be followed in case of unjustifiable detention, but simply provides, in article 18, that no one shall "be arrested except by an order in writing of the proper authority." The provincial constitutions are more specific with reference to personal rights. Thus the constitution of the province of Buenos Aires contains the following provisions:

"ART. 17. Every person arrested or detained for any reason whatsoever shall have the right to be informed of the reason for such detention within twenty-four hours.

"ART. 18. Any person arrested or detained may demand, either in person or through a third party, that he be brought before the nearest judge having jurisdiction over this class of cases. The order of arrest having been issued by such judge, the accused can not be held for a period exceeding twenty-four hours, unless he shall be notified as to the cause of his detention by a court having jurisdiction over the case. Every judge to whom the petition for release is made or to whom recourse is sought for the protection guaranteed under article 17, must take action within twenty-four hours of presentation of petition; failing to do so, he shall be subject to a fine of a thousand pesos.[3] In those cases in which the petition is granted by the judge, any official who continues to detain the accused, or fails to comply with the order of the court within the period designated, shall be subject to a fine of five hundred pesos. In all such cases, however, the court shall see to it that the accused is released."

Both the national and the provincial codes of criminal procedure have endeavored to make effective these constitutional provisions. Article 617 of the national code provides:

"Every person shall have the right to a writ of protection [4] against any order or proceeding of a public official, the effect of which is to restrict, without proper authority, the liberty of the individual.

"The writ of protection shall also issue whenever any provincial authority shall arrest or detain a member of the national congress or any other national official or person commissioned by the national government."

[1] Articles 159 *ff.* [2] Alcorta, *op. cit.*, p. 18.

[3] The equivalent of the Argentine peso is 44 cents American money in normal times.

[4] The term "writ of protection" is used as the equivalent of "writ of habeas corpus."

Similar provisions are to be found in the provincial constitutions, regulating even in greater detail the issuance of the writ of protection and providing severe penalties for the failure of the courts to comply with the requirements of the code.

In spite of the attempt to give to the citizen the fullest protection in the maintenance of his personal rights, the legal history of Argentina clearly shows that but little use has been made of the writ. The reasons for this failure to accomplish the purposes for which it was intended are threefold:

First. The reluctance of the individual citizen to assert his rights as against the public authority.

Second. The narrow interpretation given to the provisions of the constitution and to the articles of the criminal code.

Third. The failure of public officials fully to comply with the letter and spirit of constitutional and legal requirements, and the reluctance of the courts to insist on their strict enforcement.

The history of the writ of habeas corpus in Argentina clearly demonstrates the difficulties involved in making effective a procedure for the protection of individual rights in a country in which any attempt on the part of the individual citizen to resist or even question the acts of the constituted authorities is looked upon as partaking of the nature of insubordination. The inherited ideas, as well as the political traditions of the country, have served to strengthen the principle of authority and to discourage any attempt on the part of the individual citizen to nullify the acts of public officials.

The fact that so little use has been made of the writ of protection is to be attributed to these circumstances rather than to any fundamental defects in the procedure established by the code. It is true that in some of the provinces the interpretation given to the writ has been so narrow as to deprive it of much of its value. Thus the supreme court of the province of Buenos Aires has held that the writ can issue only as against public officials who are without power of arrest or detention. In other words, whenever the power of arrest or detention does exist the writ of protection can not be used to determine whether it has been legally exercised.[1]

It is important, furthermore, to bear in mind that the value of the guarantees against illegal detention has been seriously diminished in the provinces by the failure of the courts to comply strictly with the requirements of the law. Varela,[2] in his excellent commentary on the constitution of the province of Buenos Aires, refers to the fact that the absence of adequate penal sanctions to assure the observance of the constitutional requirements with reference to the detention of accused persons has led the courts to disregard many of the provisions, particularly the requirement of article 17, which prescribes that within

[1] Decision in cases of Aloy and Echevarria, decided July 15, 1914.

[2] Plan de Reformas a la Constitucion de Buenos Aires, by Luis V. Varela, 2 vols. La Plata, 1907.

24 hours of his detention the accused shall be informed of the nature of the accusation.

The further enumeration of personal and property rights in the constitution of Argentina is contained in articles 14 to 20 inclusive, which read as follows:

"ART. 14. All the inhabitants of the nation shall enjoy, subject to the laws regulating their exercise, the following rights, to wit: to work and engage in any lawful industry; to navigate and engage in commerce; to petition the authorities; to enter, remain in, travel through, or leave the Argentine territory; to publish their own ideas through the press without previous censorship; to use and dispose of their property; to associate together for useful purposes; freely to profess their religion, and to teach and to study.

"ART. 15. There shall be no slaves in the Argentine nation. Those few now existing therein shall become free as soon as this constitution becomes law. The indemnifications which may have to be paid in consequence of this declaration shall be regulated by special law. Contracts involving the purchase or sale of persons shall be criminal acts, for which the contracting parties, as well as the notary or official before whom they are executed, shall be responsible. Slaves introduced in any way whatever into the country shall become free by the mere fact of entrance into the territory of the republic.

"ART. 16. The Argentine nation does not recognize prerogatives of blood or birth; personal privileges and titles of nobility shall not exist therein. All of its inhabitants are equal before the law, and their eligibility to office shall depend exclusively upon their fitness. Equality shall be the basis of taxation and of all public burdens.

"ART. 17. Private property is inviolable, and no inhabitant of the nation shall be deprived of it except by judicial decision founded on law. Condemnation of property for a public purpose shall be authorized by law, and indemnification previously made. Congress alone shall have power to impose the taxes referred to in article 4. No personal service shall be required of anyone, except when ordered by law or by judicial decision founded on law. Authors and inventors shall be the exclusive owners of their works, inventions, or discoveries, for the length of time established by law. Confiscation of property is forever stricken out of the Argentine penal code. No armed body shall make requisitions or demand assistance of any kind.

"ART. 18. No inhabitant of the nation shall be punished except after trial and conviction, under laws anterior to the commission of the offense; nor shall he be tried by special commissions, or removed from the jurisdiction of the courts which, under the laws in force at the time when the offense was committed, should take cognizance of his case. No one shall be compelled to testify against himself; nor shall anyone be arrested except by virtue of a written order of the proper authority. The defense of person and of rights before the courts shall be inviolable. Domicile, as well as epistolary correspondence and private papers, shall be inviolable, but a law shall determine in what cases and under what circumstances the former may be entered, and the latter seized. The penalty of death for political offenses, torture of all kinds, and whipping are abolished. The national jails shall be healthful and clean, intended for the safe-keeping and not for the punishment of the offenders detained therein, and any measure which, under color of precaution, tends to inflict upon the prisoners more hardships than those required for their security shall cause the judge authorizing it to be held responsible.

"ART. 19. Private actions which in no way offend public order or morals, and are not injurious to a third party, shall be reserved to God alone, and are not subject to the authority of the state. No inhabitant of the nation shall be bound to do what is not ordered by law, nor shall he be forbidden to do what it does not prohibit.

"ART. 20. Aliens shall enjoy in the territory of the nation all the civil rights of citizens. They may exercise their trade, business, or profession; own, buy, and transfer real estate; navigate the rivers and coasts; practice freely their religion; make wills, and contract marriage in conformity with the law. They shall not be compelled to become citizens or to pay forced extraordinary taxes. They may obtain naturalization by residing two consecutive years in the nation, but the authorities may shorten this period in favor of the applicant who affirms and proves that he has rendered services to the republic."

These provisions indicate how fully, and with what wealth of detail, the framers of the constitution of 1853 endeavored to secure to every inhabitant of the republic, whether citizen or alien, the widest possible field of individual liberty. Comparison with the constitution of the United States shows that substantive rights are enumerated with far greater detail in the Argentine constitution. On the other hand, the Argentine constitution contains fewer provisions establishing the procedure for the assertion of individual rights. As the enumeration of rights is of little value without the assurance of a definite procedure for their maintenance, it is important in this connection to examine the provisions which safeguard the substantive rights assured in articles 14 to 20 inclusive. In this connection we must first consider a provision for which there is no parallel in the constitution of the United States, to wit, article 29, which provides:

"Congress shall not have power to grant to the national executive, or the provincial legislatures the power to grant to the provincial governors extraordinary powers, or the whole of the public authority, or to assent to submissions or supremacy through which the lives, the honor, or the property of Argentines may be placed at the mercy of governments, or of any person whatsoever. Acts of this character shall be utterly void, and shall render their authors, or those who consent to them or authorize them with their signatures, liable to be called to account and to be punished as infamous traitors to their country."

The unusual character of this provision reflects a long and cruel chapter in the history of Argentine political development. The history of the South American republics contains a number of instances in which the provisions of written constitutions have been set aside and all constitutional guarantees to person and property nullified by the delegation to the national executive of the sum total of all public authority, or, as it is termed in Spanish, "la suma del poder publico." Such delegation of power has usually taken place in moments of grave crises brought about either through domestic insurrection or foreign invasion. These powers, once granted, have rapidly become the instruments of tyranny and oppression, sweeping ruthlessly

aside all guarantees to personal and property rights. The definiteness of the prohibition contained in article 29, and the extreme penalties prescribed for violations thereof, reflect the fears inspired by many years of bitter experience.

The prominent position given to constitutional guarantees in the Argentine constitution, a position far more significant than in the constitution of the United States, raises a question of fundamental importance, namely, under what conditions may constitutional guarantees be suspended?

The constitution of the United States, it will be recalled, makes no provision for the suspension of constitutional guarantees other than the writ of habeas corpus. Article I, section 9, paragraph 2, provides:

"The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it."

In the famous case of *ex parte* Milligan,[1] the supreme court of the United States laid down the following principles:

"It is claimed that martial law covers with its broad mantle the proceedings of this military commission. The proposition is this: that in a time of war the commander of an armed force (if, in his opinion, the exigencies of the country demand it, and of which he is to judge) has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of his will; and in the exercise of his lawful authority can not be restrained, except by his superior officer or the president of the United States.

"If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the executive, substitute military force for and to the exclusion of the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules.

"The statement of this proposition shows its importance; for, if true, republican government is a failure, and there is an end of liberty regulated by law. Martial law, established on such a basis, destroys every guarantee of the constitution, and effectually renders the 'military independent of, and superior to, the civil power,' — the attempt to do which by the king of Great Britain was deemed by our fathers such an offense that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law can not endure together; the antagonism is irreconcilable; and, in the conflict, one or the other must perish.

"It follows, from what has been said on this subject, that there are occasions when martial rule can be properly applied. If in foreign invasion or civil war the courts are actually closed, and it is impossible to administer criminal justice according to law, then, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity

[1] 4 Wallace, 2.

creates the rule, so it limits its duration; for, if this government is continued after the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction."

The suspension of constitutional guarantees in the Argentine system is accomplished by what is known as the declaration of a "state of siege." The term "*estado de sitio*" corresponds to the French "*état de siège*" and the German "*Kleine Belagerungszustand*," but has no precise equivalent in American jurisprudence. Four articles of the Argentine Constitution deal directly with the subject, viz.:

"ART. 23. In case of domestic disturbance or foreign attack, endangering the observance of this constitution and the safety of the authorities created by it, a state of siege shall be proclaimed in the province or territory wherein public order is disturbed, and the constitutional guaranties shall be suspended within its limits. But during this suspension, the president of the republic shall have no power by himself to condemn anyone or inflict punishment. His power shall be limited in such cases, so far as persons are concerned, to arrest or transfer them from one place in the country to another, should they not prefer to leave the Argentine territory.

"ART. 53. The senate may also authorize the president of the nation to declare a state of siege in one or more places in the republic in case of foreign invasion.

"ART. 67, CLAUSE 26. Congress shall have power to proclaim a state of siege in one or more places in the nation in case of internal disorder, and to approve or suspend the state of siege declared during the recess of congress by the executive power.

"ART. 86, CLAUSE 19, should read as follows:

"With the consent of the senate, and in case of foreign invasion, he may declare one or more places in the nation to be in a state of siege for a limited time. In case of internal troubles, he may exercise such power only during the recess of Congress, for such power belongs to that body. The President shall exercise this power within the limitations established by Art. 23."

It will be seen from these provisions that the constitution contemplates the existence of a "state of siege" under at least two different conditions: (1) foreign invasion; (2) domestic insurrection. In addition to these two express delegations of exceptional governmental authority, the practice of the country has been to justify the declaration of a state of siege when domestic order is menaced, even when there have been no overt acts of violence.

The situation which arises with the declaration of a state of siege involves consequences of a far more serious character than the suspension of the privilege of the writ of habeas corpus in the United States. It means that, for the time being, neither personal nor property rights remain inviolate as against the action of the federal authorities. As tersely stated by an eminent Argentine jurist: [1]

"The residence, correspondence, and private papers of the citizen may be seized and searched without previous judicial order; the right of public

[1] Manual de la Constitucion Argentina, p. 268, por Joaquin V. Gonzalez.

meeting, of association, the right to carry arms, the freedom of speech and of the press, all these liberties may be denied by the public authority to the extent and according to the standards which it may deem necessary for the preservation or the reëstablishment of the public peace." [1]

It is evident that unless these far-reaching governmental powers were carefully safeguarded through constitutional restrictions they might readily become the instruments of tyranny and oppression. In order to avoid this danger, the Argentine constitution provides the following safeguards:

First. The "state of siege" can be declared only by the federal government, the provincial authorities enjoying no such power. This principle is the result of constitutional interpretation of commentators rather than specific formulation. The question has never been squarely decided by the federal supreme court. That the federal constitution is silent with reference to the exercise of this power by the provincial governments would not, of itself, be conclusive, inasmuch as the power might be reserved to the provinces by their respective constitutions. The silence of the provincial constitutions with reference to the declaration of a "state of siege," together with the fact that such exceptional governmental powers can not be presumed to exist independent of specific constitutional delegation, would seem to be conclusive with reference to the absence of provincial authority to suspend the constitutional guarantees. It is furthermore important to note the significant historical fact that when, acting under the provisions of the constitution of 1853, the federal congress examined and revised the provincial constitutions in order to bring them into harmony with the national constitution, the provisions of the constitutions of Mendoza, La Rioja, San Luis, and Corrientes providing for the declaration of a "state of siege" were eliminated.[2]

Second. In the exercise of the power to suspend the guarantees to person and property, the constitution places definite limitations on the federal authorities.

The constitution (articles 23, 53, 67, and 86) distinguishes between two broad classes of instances in which a "state of siege" may be declared, viz., foreign invasion and domestic disturbance.

In case of foreign invasion, the senate is given authority (article 53) to authorize the president to suspend the constitutional guarantees. When, however, the danger arises because of domestic disturbance, the suspension must be made by act of congress. If, however, that body is not in session, the president is empowered to declare a "state of siege." Under the provisions of article 67, clause 26, congress, upon assembling, is given the power either to approve or suspend the measures adopted by the president.

The reasons for giving to the president wider powers in case of foreign invasion will be evident at a glance. Need of immediate action in periods of international conflict makes prompt action indispensable, so much so, in fact, that were the constitution silent on this point, the national executive would probably exercise this authority as part of the general war power.

There has been considerable discussion amongst Argentine jurists

[1] Decisions of the Supreme Court of the Argentine Republic, 2d series, vol. 3, p. 405.
[2] National Laws Nos. 36, 37, 39, and 97; also Gonzalez, *op. cit.*, p. 264.

as to the precise scope of the congressional powers contained in article 67, clause 26, of the constitution, which reads as follows:

"To proclaim a state of siege in one or more places in the nation in case of internal disorder, and to approve or suspend the state of siege declared during the recess of congress by the executive power."

In the main, the discussion has hinged on the question whether the words "approve or suspend" include the right to disapprove, and thus retroactively nullify, as far as such nullification is possible, the acts of the executive performed during the recess of congress. This question has never been squarely presented to the supreme court, but the overwhelming body of opinion is definitely opposed to so broad an interpretation of congressional powers.[1]

It will be noted that the provisions of the Argentine constitution with reference to the suspension of constitutional guarantees are more specific and more definite than the provision of the constitution of the United States relating to the suspension of the privilege of the writ of habeas corpus. The relative powers of the national executive and legislative authorities are far more clearly defined and the possibility of conflict of authority correspondingly reduced.

A further limitation on the exercise, or rather on the consequences of the suspension of constitutional guarantees is to be found in the latter part of article 23, which reads as follows:

"But during the suspension the president of the republic shall have no power by himself to condemn anyone or inflict punishments. His power shall be limited in such cases, so far as persons are concerned, to arrest or transfer them from one section of the national territory to another should they not prefer to leave the Argentine territory."

The purpose of these limitations is to diminish the dangers incident to the suspension of constitutional guarantees and particularly to prevent, as far as possible, the powers granted to the executive from being made the instruments of political tyranny and personal despotism. An examination of the instances of the suspension of constitutional guarantees in Argentina discloses the dominant position occupied by the national executive as compared with the legislative authority.[2]

The first instance of the suspension of constitutional guarantees after the adoption of the federal constitution of 1853 is to be found in the presidential decree of September 1, 1854, declaring a "state of siege," for a period of thirty days, in the province of Corrientes. The occasion for this decree was the invasion of the province by a revolutionary leader, General Cáceres. The prompt suppression of the internal disturbance led to the restoration of the constitutional guarantees before the expiration of the thirty days, viz., by decree of

[1] Alcorta, Garantias Constitucionales, p. 238 *ff.*

[2] The material upon which this list of instances of the suspension of constitutional guarantees is based is contained in the work of Alcorta, Garantias Constitucionales, pp. 180 to 186 inclusive.

September 11, 1854; upon the assembling of the national congress in December of the same year the action of the president of the republic was approved.[1]

A recurrence of domestic disturbance in the same province during the following year (1855) led to a further suspension of constitutional guarantees for a period of thirty days by decree of March 16, 1855. As in the preceding instance, the early termination of the conflict led to the restoration of the constitutional guarantees by decree of April 3, 1855.[2]

The war of the Argentine confederation against the province of Buenos Aires furnished the next occasion for the declaration of a "state of siege." In this instance a peculiar situation arose because the national congress delegated to the commander-in-chief of the army, General Urquiza, the power to suspend the constitutional guarantees. Availing himself of this power, General Urquiza, on October 8, 1859, suspended the constitutional guarantees in the city of Rosario for a period of thirty days. Although this suspension was approved by executive decree of October 10, 1859, the constitutionality of the procedure is open to serious doubt.[3]

Again, during the civil war of 1861, by law of June 14 and September 19, the president was empowered to suspend the constitutional guarantees in the district of Rosario,[4] and subsequently in such portions of the territory of the republic as he might deem necessary.[5]

With the revision of the constitution by the national convention of 1860, the powers of the president with reference to the suspension of constitutional guarantees were further limited by requiring that in all cases of domestic disturbance the declaration of a state of siege should first receive the approval of the national congress if that body be in session. Under the constitutional provision, as thus amended, the instances of suspension of guarantees have been as follows:[6]

(*a*) By law of August 12, 1862, the congress authorized the president to suspend the constitutional guarantees in the province of Corrientes for a period of sixty days.[7]

(*b*) The Paraguayan war led to a prolonged suspension of constitutional guarantees. During the recess of the congress the president declared the entire territory of the republic in a "state of siege." Subsequently, by law of May 19, 1865, the president was authorized to suspend the constitutional guarantees for such period as he might deem necessary,[8] of which power he availed himself by executive decree of June 9, 1868.[9]

(*c*) A rebellion in the province of Entre Ríos, led by the famous Lopez Jordan, was the occasion of the next declaration of a "state of siege" in that province by executive decree of May 2, 1870, approved subsequently by the law of August 12, 1870.[10]

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[1] Registro Nacional, 1854, pp. 483, 491, and 569.
[2] *Ibid.*, 1855, pp. 645 and 653.
[3] *Ibid.*, 1859, pp. 38, 40, 197, and 198.
[4] *Ibid.*, 1861, p. 715.
[5] *Ibid.*, pp. 759 and 760.
[6] Alcorta, *op. cit.*, pp. 184 to 187 inclusive.
[7] Registro Nacional, 1862, p. 140.
[8] *Ibid.*, 1865, pp. 56 and 122
[9] *Ibid.*, 1868, p. 17.
[10] *Ibid.*, 1870, pp. 67 and 69.

(*d*) The conflict with the province of Entre Ríos having given rise to fears that the same would involve the adjoining provinces, a law of September 24, 1870, authorized the president to suspend the constitutional guarantees in these provinces for a period of sixty days.[1]

(*e*) The continuance of the conflict in Entre Ríos again made necessary the suspension of constitutional guarantees in the adjoining provinces of Corrientes and Santa Fé by executive decree of May 3, 1873, subsequently approved by the law of May 31.[2]

(*f*) The same conflict led to a declaration of a "state of siege" in the provinces of Buenos Aires, Santa Fé, Entre Ríos, and Corrientes for a period of sixty days by the law of September 24, 1874.[3]

(*g*) The continuance of the civil war finally led to the suspension of constitutional guarantees throughout the republic for a period of sixty days by the act of September 26, 1874,[4] subsequently continued for a period of ninety days by decree of November 24.[5]

(*h*) One of the most curious instances of the declaration of a "state of siege," and one which gave rise to bitter criticism of the government, involved the situation created in the city of Buenos Aires by the burning of the Jesuit school known as the Colegio del Salvador. The president, fearing that this disturbance would lead to anti-Jesuit riots throughout the province of Buenos Aires, suspended the constitutional guarantees in the province for a period of thirty days.[6] The action of the president led to a prolonged discussion in the senate upon the assembling of the congress, but with no definite results. The circumstances indicate that there was not the slightest justification for the declaration of a "state of siege." The attack was a disturbance of local order, readily repressed by the police, and which partook of none of the characteristics of a revolutionary movement or a general domestic disturbance.[7]

(*i*) A revolutionary movement in the province of Corrientes in 1876 led to the suspension of constitutional guarantees in the provinces of Corrientes, Entre Ríos, Santa Fé, and Buenos Aires, by executive decree of November 27, 1876.[7]

(*j*) During the struggle between the national government and the provincial authorities of Buenos Aires in 1880, the president declared the entire province in a "state of siege," by decree of June 1880, for a period to terminate October 31 of the same year. The action of the president was approved by the act of congress of August 1880.[8]

(*k*) In 1890, 1892, and 1893, the constitutional guarantees were suspended for brief periods owing to internal disturbances.

(*l*) The most recent instance of the declaration of a "state of siege" occurred in 1909 as a result of the throwing of a bomb in the Colon theater of Buenos Aires. This outrage was attributed to the anarchist agitation which had been carried on for a number of years. The purpose which the president had in view in suspending the constitutional guarantees was to facilitate the expulsion of undesirable foreigners. It is evident that the circumstances in no way justified so drastic a measure. In fact, the state of siege was raised after a short period and, in order to meet similar situations in the future, the congress passed a law governing the residence of aliens within the republic, which gives to the national executive power to expel undesirable foreigners.

[1] Registro Nacional, p. 117.
[2] *Ibid.*, 1873, pp. 199 and 227.
[3] *Ibid.*, 1874, p. 603.
[4] *Ibid.*, p. 608.
[5] *Ibid.*, p. 704.
[6] Decree of March 1, 1875, Registro Nacional, 1875, p. 113.
[7] Registro Nacional, 1876, p. 602.
[8] *Ibid.*, 1880, pp. 208 and 226.

In studying the history of the Argentine Republic, one is impressed with the frequent use of the power to suspend the constitutional guarantees, and especially the numerous instances in which the circumstances in no way justified such extreme measures. During the period immediately following the adoption of the constitution of 1853 this tendency is to be explained by the unsettled political conditions. The absence of real political unity and the constant conflicts between the provinces created an atmosphere of uncertainty and suspicion which led to recourse to extreme measures at the slightest indication of domestic unrest. This fact explains why disturbances which in ordinary circumstances would be regarded as simple breaches of the peace were immediately interpreted as partaking of the character of domestic insurrection, requiring the most extreme measures. With the increasing stability of political institutions, the occasion for a declaration of a "state of siege" has been less and less frequent. Furthermore, there is a growing body of public opinion opposed to the use of such measures. The broad interpretation of executive power which characterized the early constitutional development of the country will hereafter be subjected to closer control in matters affecting the fundamental personal and property rights of the citizen.

In concluding this discussion of constitutional guarantees it is important to bear in mind that the establishment of a "state of siege" is not equivalent to the declaration of martial law. Although there exists no definite Argentine jurisprudence on this subject, the commentators, almost without exception, accept the principles laid down in *ex parte* Milligan,[1] in which the court held that martial law implied the trial of citizens by military commissions, and that such procedure can only be justified in time of war, in the actual theater of military operations, when the courts are closed, and it is impossible, therefore, to administer justice by means of the regularly constituted tribunals.

[1] 4 Wallace, 2.

CHAPTER XIII.

LIBERTY OF SPEECH AND OF THE PRESS; RELIGIOUS LIBERTY.

The Argentine constitution makes no reference to the freedom of speech, but deals with the liberty of the press in the following terms:

"ART. 32. The federal congress shall not pass any law restricting the liberty of the press, or subjecting it to federal jurisdiction."

The commentators offer no explanation for the failure to include the freedom of speech, particularly in view of the fact that many of the provincial constitutions contain specific provisions dealing with this subject. The consensus of opinion seems to be that the freedom of speech, while not specifically mentioned, is to be considered as enjoying the same immunities as the freedom of the press.[1]

The prohibitions of article 32 are directed exclusively against the federal government. Not only is the national congress prohibited from limiting the freedom of the press, but it is also prevented from extending the jurisdiction of the federal tribunals to include press offenses. This specific prohibition was deemed necessary because of a possible broad interpretation of the power granted to the national congress (by article 67, clause 11) to enact civil, commercial, penal, and mining codes. In order, therefore, to ascertain the status of freedom of speech and of the press in the Argentine constitutional system, it is necessary to examine the political institutions of the provinces. It will probably suffice for our present purposes to study the situation in the most important of the Argentine provinces, that of Buenos Aires.

The provincial constitution of Buenos Aires contains the following provision governing freedom of speech and of the press:

"ART. 11. Freedom of speech and of the press is assured to all the inhabitants of the province. Everyone may publish his views and opinions, being responsible for the abuse of this privilege before a jury which shall take cognizance both of law and fact in accordance with the law governing this subject. Such legislation must not contain provisions calculated to prevent the free expression of opinion or attempting to limit the same. In all prosecutions affecting freedom of speech or of the press, the jury shall admit the truth of the charge as justification in cases having to do with the public acts of officials, or with the political capacity of officials or candidates for public office."

While this constitutional provision would seem to offer ample protection, the important question that presents itself is whether the legis-

[1] Gonzalez, Manual de la Constitucion Argentina, p. 166.

lation and jurisprudence of the province have given full effect to the intent of the framers of the constitution of Buenos Aires.

In the first place, it is important to note that the provincial legislature has failed to give effect to the provisions of article 11 of the constitution. Owing to the fact that trial by jury does not form a part of the civil or criminal procedure of the province, a special law for press offenses was necessary. No such law having been passed, the courts have found themselves compelled to extend to press offenses the provisions of the national civil and penal codes relating to libel. The supreme court of the province of Buenos Aires has established a distinction between offenses in which the press is merely the instrument through which a third person utters a libel and press offenses in the strict sense of the word, such as the printing of articles contrary to public decency and morals.[1] The former are eliminated from the class of press offenses and are dealt with in accordance with the provisions of the national penal and civil codes relating to libel. As regards the class of offenses known as distinctively press offenses, the courts, in the absence of a press law to make effective the provisions of article 11 of the provincial constitution, have dealt with such offenses as in the nature of torts, governed by the penal and civil codes.

The annals of journalism in the province of Buenos Aires, as well as in every other section of the Argentine, indicate that the press enjoys the widest possible liberty of action. Neither the provincial nor the national government has attempted anything in the nature of repressive measures. In fact, the study of the relations existing between the public authorities and the press in all parts of the republic indicates a marked tendency on the part of the government to placate the public press through the distribution of favors. It is a noticeable fact that a considerable number of the reporters of the daily papers occupy minor public offices.

RELIGIOUS LIBERTY.

The provisions of the Argentine constitution relating to religious liberty are as follows:

"ART. 2. The federal government supports the Roman Catholic Apostolic religion."

"ART. 14. All the inhabitants of the nation shall enjoy, subject to the laws regulating their exercise, ... the right freely to profess their religion.[2]

"ART. 20. Aliens . . . . shall be permitted to practice freely their religion."

"ART. 67, CLAUSE 19. The national congress shall have power to approve or reject treaties concluded with other nations, and the concordats entered into with the Apostolic See, and to make rules for the exercise of ecclesiastical patronage throughout the nation."

[1] Fallos de la Suprema Corte de la Provincia de Buenos Aires, Serie VII, Tomo IV, pp. 215, 230.

In addition to the preceding provisions, articles 76 and 80 of the constitution prescribe religious qualifications for the offices of president and vice-president. These provisions are as follows:

"ART. 76. To be elected president or vice-president of the nation one must have been born in the Argentine territory, or if born in a foreign country be the son of a native citizen; must belong to the Roman Catholic Apostolic Church; and must have all the other qualifications required to be a senator."

"ART. 80. On entering upon the discharge of their duties the president and the vice-president shall take an oath, which shall be administered to them by the president of the senate (the first time by the president of the Constitutional Convention), congress being in session, in the following terms:

'I, ——— ———, do swear, before God our Lord and these Holy Gospels, to discharge loyally and patriotically the office of president (or vice-president) of the nation, and faithfully to observe and to cause others to observe, the constitution of the Argentine nation. Should I fail to do so, may God and the nation require it of me.'"

Another section of the constitution commits the national government to the extension of the influence of the Roman Catholic religion in the following terms:

"ART. 67, SECT. 15. The congress shall have power to provide for the security of the frontiers and for the preservation of peaceful intercourse with the Indians, and to promote their conversion to Catholicism."

These provisions indicate that while the freedom of religious worship is guaranteed to all residents of the republic, the national government occupies an exceptional position toward the Roman Catholic Church. The policy of the government toward the church has its roots in the development of the relation between church and state during the colonial period, during which the king of Spain and his representative, the viceroy of the river Plate, exercised a certain control over ecclesiastical affairs known as the "patronato." Pope Alexander VI, realizing the difficulties incident to the exercise of effective control over ecclesiastical affairs in the far-away regions of the viceroyalty of the river Plate, recognized in the papal bull of 1508 a condition of fact which had existed since the earliest period of Spanish domination in the southern section of America, namely, the direct control of the king of Spain and of his representatives over the organization of the church.[1] This included not only the appointment of bishops and minor ecclesiastical dignitaries, but also the power to settle disputes or conflicts that might arise within the church. Although the Vatican regarded the king of Spain as its personal representative in these matters, the condition of fact which developed in the viceroyalty of the river Plate was the supremacy of the civil over the ecclesiastical authority.

With the beginning of the movement for emancipation from

[1] Cesareo Chalcatano, Patronato Nacional Argentino. Buenos Aires, 1885.

Spain, the leaders of the revolution show, in no uncertain terms, their determination to enforce the supremacy of the civil over the ecclesiastical authority. The revolutionary junta of 1810 immediately issued a decree, under which it assumed all the powers of the "patronato" over the church.[1] In order further to clarify the situation, the general constituent assembly of 1813 issued a declaration to the following effect:

"The united provinces of the river Plate are free from all ecclesiastical authority established beyond the confines of the country."[2]

The national congress, which succeeded this constituent assembly, delegated to the chief executive, then known as the supreme director of the United Provinces of the River Plate, authority to make appointments to fill ecclesiastical vacancies.

It will be noticed that these decrees and declarations were not intended to bring about the separation of church and state. On the contrary, their logical result was to make the support of the Catholic Church one of the functions of the newly founded republic. The constitution of 1819 declared the Catholic religion to be the official state religion, and in various provisions, notably articles 86 and 87, placed all ecclesiastical dignitaries in the category of state officials.

The same spirit of civil control over ecclesiastical affairs characterizes the series of national constitutions which succeeded that of 1819. In the constitution of 1826 we find a new element of control in the provision giving to the supreme court the power to examine all papal bulls and encyclicals, and to recommend to the chief executive whether such documents should be admitted or excluded.

The constitution of 1853 incorporated all the important provisions of the previous constitutions asserting the supremacy of the civil authority and defining the same with even greater definiteness. In the first place, it is to be noted that the constitution no longer speaks of the Catholic religion as the state religion, as was the case in all the previous constitutions, but limits itself to the simple statement: "The federal government supports the Roman Catholic Apostolic Church" (art. 2). This does not mean that the national government has constituted itself an instrument of religious propaganda, but simply that, as a logical consequence of the historical control exercised over the Catholic Church, the national treasury defrays the expenses necessary for its maintenance.

The most important powers which the national government has reserved to itself under the exercise of the patronato are:

First. — The presentation to the Vatican of a list of names from which the bishop of each diocese must be selected. This list is made by the senate and presented to the Vatican by the president.

[1] See Chalcatano, *op. cit.*, p. 64.

[2] Declaration of June 4, 1813.

Second. — The control over papal bulls and encyclicals. This power is exercised in accordance with the provisions of article 86, clause 9, which gives to the president the power, with the advice and consent of the supreme court, "to grant or refuse promulgation to decrees of the councils, bulls, briefs, and rescripts of the Supreme Pontiff at Rome; but said grant or refusal shall be made by law, whenever the ecclesiastical enactments affected by either action contain provisions of a general or permanent character." The purpose of this reservation is to assert the supremacy of the civil over the religious authority and to prevent the promulgation of any ecclesiastical orders not consonant with the federal constitution or laws.

Third. — Although strictly speaking, not a part of the "patronato," the power of the national government over ecclesiastical affairs is strengthened by the provision of article 67, clause 20, which gives to the congress the power "to admit into the territory of the Republic religious orders in addition to those now existing." By implication, the congress has the power to exclude such religious orders as it may deem undesirable. This control is further strengthened by the prohibition upon the provinces contained in article 108, which forbids them to admit new religious orders.

The foregoing analysis of the relation existing between church and state in Argentina, while indicating a relationship totally different from that existing in the United States, does not mean that the freedom of religious worship is limited or in any way menaced. It can not even be said that the material support given to the Catholic Church has strengthened its position. On the contrary, the influence of the church on the life of the people is less in Argentina than in the United States. In fact, one of the purposes which the framers of the earliest Argentine constitution had in mind in perpetuating the "patronato" system, inherited from colonial times, was to curb the power of the church, and to prevent, as far as possible, the participation or interference of the church in the political affairs of the new-born nation. This determination was strengthened by the realization of the fact that at the time of the first movement for independence most of the higher church dignitaries were Spanish sympathizers, frowning upon the revolutionists and doing everything in their power to maintain the supremacy of Spain.

The study of the present situation leads one to the conviction that not only is religious liberty fully guaranteed in every section of Argentina, but also that the problem of the relation between church and state has been solved in a manner which has eliminated the question from the field of public discussion. The question, for the time being at least, is considered as settled.

OTHER PERSONAL AND PROPERTY RIGHTS.

As regards other personal and property rights, it is unnecessary to enter into any detailed discussion. The enumeration of these rights is contained in articles 14 to 19 inclusive, which read as follows:

"ART. 14. All the inhabitants of the nation shall enjoy, subject to the laws regulating their exercise, the following rights, to wit: to work and engage in any lawful industry; to navigate and engage in commerce; to petition the authorities; to enter, remain in, travel through, or leave the Argentine territory; to publish their own ideas through the press without previous censorship; to use and dispose of their own property; to associate together for useful purposes; freely to profess their religion, and to teach and to study.

"ART. 15. There shall be no slaves in the Argentine nation. Those few now existing therein shall become free as soon as this constitution becomes law. The indemnifications which may have to be paid in consequence of this declaration shall be regulated by special law. Contracts involving the purchase or sale of persons shall be criminal acts, for which the contracting parties, as well as the notary or official before whom they are executed, shall be responsible. Slaves introduced in any way whatever into the country shall become free by the mere fact of entrance into the territory of the Republic.

"ART. 16. The Argentine nation does not recognize prerogatives of blood or birth; personal privileges and titles of nobility shall not exist therein. All of its inhabitants are equal before the law, and their eligibility to office shall depend exclusively upon their fitness. Equality shall be the basis of taxation and of all public burdens.

"ART. 17. Private property is inviolable, and no inhabitant of the nation shall be deprived of it except by judicial decision founded on law. Condemnation of property for a public purpose shall be authorized by law, and indemnification previously made. Congress alone shall have power to impose the taxes referred to in article 4. No personal service shall be required of anyone, except when ordered by law or by judicial decision founded on law. Authors and inventors shall be the exclusive owners of their works, inventions, or discoveries, for the length of time established by law. Confiscation of property is forever stricken out of the Argentine penal code. No armed body can make requisitions or demand assistance of any kind.

"ART. 18. No inhabitant of the nation shall be punished except after trial and conviction, under laws anterior to the commission of the offense; nor shall he be tried by special commissions or removed from the jurisdiction of the courts which, under the laws in force at the time when the offense was committed, should take cognizance of his case. No one shall be compelled to testify against himself; nor shall anyone be arrested except by virtue of a written order of the proper authority. The defense of person and of rights before the courts shall be inviolable. Domicile, as well as epistolary correspondence and private papers, shall be inviolable, but a law shall determine in what case and under what circumstances the former may be entered and the latter seized. The penalty of death for political offenses, torture of all kinds, and whipping are abolished. The national jails shall be healthful and clean, intended for the safe-keeping and not for the punishment of the offenders detained therein, and any measure which, under color of precaution, tends to inflict upon the prisoners more hardships than those required for their security shall cause the judge authorizing it to be held responsible.

"ART. 19. Private actions which in no way offend public order or morals, and are not injurious to a third party, shall be reserved to God alone, and are not subject to the authority of the State. No inhabitant of the nation shall be bound to do what is not ordered by law, nor shall he be forbidden to do what it does not prohibit."

It is important to note that these guarantees are effective not only as against possible encroachment by the national government, as in the case of the first ten amendments to the constitution of the United States, but are equally effective as against hostile provincial action. In this respect, therefore, the provisions of the Argentine constitution relative to personal and property rights enjoy a broader application than similar provisions in the constitution of the United States.

The decades immediately succeeding the adoption of the constitution of 1853, when the country was still unorganized politically, witnessed repeated violations of these provisions by the federal executive; but during the last twenty-five years they have been constantly and faithfully observed.

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APPENDIX A

DOCUMENTS ILLUSTRATIVE OF THE CONSTITUTIONAL DEVELOPMENT OF THE ARGENTINE REPUBLIC.

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Provisional Regulation of October 22, 1811 (Reglamento Provisorio del 22d de Octubre 1811).

Provisional Statute of November 22, 1811 (Estatuto Provisional del 22d de Noviembre, 1811; Registro Nacional, vol. 1, pp. 122, 124, 127, 128).

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Fundamental Law of January 23, 1825 (Ley Fundamental de 23 de Enero, 1825; Registro Nacional, vol. 2, pp. 1780, 1781, 1783, 1816, 1843, 1861).

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Treaty of August 7, 1829, between Cordoba and Santa Fe; Treaty of October 19, 1829, between Buenos Aires and Santa Fe; Treaty of October 27, 1829, between Buenos Aires and Cordoba; Treaty of April 16, 1830, between San Juan and Cordoba; Treaty of July 5, 1830, between Cordoba, San Luis, Mendoza, and Rioja; Treaty of August 31, 1830, between the above four provinces and San Juan, Catamarca, Santiago, Salta, and Tucuman (Registro Nacional, vol. 2, pp. 242, 252, 256, 267, 270, and 272).

Treaty of January 4, 1831, between Buenos Aires, Santa Fe, and Entre Rios (Registro Nacional, vol. 2, p. 279; also volume on Convencion Nacional de 1898, Appendix, p. 587).

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APPENDIX B.

CONSTITUTION OF THE ARGENTINE REPUBLIC.

(September 25, 1860.)

PREAMBLE.

We, the representatives of the people of the Argentine nation, assembled in constitutional convention by the will and election of the provinces of which it is composed, in pursuance of previous agreements, for the purpose of framing a constitution for the national union, to establish justice, insure domestic peace, provide for the common defense, promote the general welfare, and secure the benefits of liberty to ourselves, our posterity, and to all men in the world who may desire to inhabit the Argentine soil, invoking the protection of God, the source and origin of all reason and justice, do hereby ordain, decree, and establish this constitution for the Argentine nation.

PART FIRST. SOLE CHAPTER.

DECLARATIONS, RIGHTS, AND GUARANTIES.

ARTICLE 1. The Argentine nation adopts for its government the federal republican representative form, as established by this constitution.

ARTICLE 2. The federal government supports the Roman Catholic Apostolic religion.

ARTICLE 3. The authorities exercising the functions of the federal government shall reside in the city which shall be declared by special act of congress to be the capital of the republic, a previous cession of the territory which shall become federal being made by one or more of the provincial legislatures.[1]

ARTICLE 4. The federal government shall defray the expenses of the nation with funds of the national treasury, consisting of: receipts from import and export duties; *duties to be levied until 1866 on the exports of domestic merchandise as provided in paragraph No. 1 of article 67 of the present constitution;*[2] proceeds of the sale or lease of national lands; revenue of the postal service; taxes levied by the general congress equitably and in proportion to the population; and moneys obtained through loans and financial operations decreed by said congress for national urgencies, or for works of national utility.

ARTICLE 5. Each province shall adopt its own constitution, which shall provide for the administration of justice in its own territory, its municipal system, and primary instruction, such constitution to be framed upon the republican representative plan, in harmony with the principles, declarations, and guaranties of the national constitution. Upon these conditions, the federal government shall guarantee to each province the enjoyment and exercise of its institutions.

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[1] A law promulgated September 21, 1880, established the national capital in the city of Buenos Aires, ceded by the legislature of the state of the same name.

[2] The words printed in italics were ordered to be stricken out by the national convention held at Santa Fé on September 12, 1866.

ARTICLE 6. The federal government shall have the right to intervene in the territory of the provinces in order to guarantee the republican form of government or to repel foreign invasions; and when requested by the constituted authorities, to maintain them in power, or to re-establish them if they shall have been deposed by sedition or by invasion from another province.

ARTICLE 7. Full credit shall be given in each province to the public acts and judicial proceedings of all other provinces; and congress shall have the power to provide by general laws how such acts and proceedings shall be proved, and what legal effect they shall have.

ARTICLE 8. The citizens of each province shall enjoy in all the others the rights, privileges, and immunities belonging to the citizens of such other provinces. The extradition of criminals is reciprocally obligatory on all the provinces.

ARTICLE 9. All custom-houses in the territory of the nation shall be national, and governed by the tariff laws enacted by congress.

ARTICLE 10. The circulation in the territory of the republic of articles of domestic production or manufacture, and of all classes of goods and merchandise cleared at the custom-houses, shall be free from taxation.

ARTICLE 11. Articles of national or foreign production or manufacture, and cattle of all kinds, when passing from the territory of one province into that of another, shall be exempt from transit duties. The same freedom shall also be enjoyed by the carriages, vessels, or animals used for their transportation, and no other duty, whatever its name may be, shall hereafter be imposed upon such articles and vehicles during their transit through the territory.

ARTICLE 12. Vessels bound from one province to another shall not be compelled to enter, cast anchor, or pay duties on account of transit, and in no case shall any preference be given to one port over another by means of commercial laws or regulations.

ARTICLE 13. New provinces may be admitted into the nation, but no province shall be erected within the territory of another, nor shall two or more provinces be consolidated into one, without the consent of the legislatures of the interested provinces and of congress.

ARTICLE 14. All the inhabitants of the nation shall enjoy, subject to the laws regulating their exercise, the following rights, to wit: to work and engage in any lawful industry; to navigate and engage in commerce; to petition the authorities; to enter, remain in, travel through, or leave the Argentine territory; to publish their ideas through the press without previous censorship; to use and dispose of their property; to associate together for useful purposes; freely to profess their religion, and to teach and to study.

ARTICLE 15. There shall be no slaves in the Argentine nation. Those few now existing therein shall become free as soon as this constitution becomes law. The indemnifications which may have to be paid in consequence of this declaration shall be regulated by special law. Contracts involving the purchase or sale of persons shall be criminal acts, for which the contracting parties, as well as the notary or official before whom they are executed, shall be responsible. Slaves introduced in any way whatever into the country shall become free by the mere fact of entrance into the territory of the republic.

ARTICLE 16. The Argentine nation does not recognize prerogatives of blood or birth; personal privileges, and titles of nobility shall not exist therein. All of its inhabitants are equal before the law, and their eligibility to office shall depend exclusively upon their fitness. Equality shall be the basis of taxation and of all public burdens.

ARTICLE 17. Private property is inviolable, and no inhabitant of the nation shall be deprived of it except by judicial decision founded on law. Condemnation of property for a public purpose shall be authorized by law, and indemnification previously made. Congress alone shall have power to impose the taxes referred to in article 4. No personal service shall be required of anyone, except when ordered by law or by judicial decision founded on law. Authors and inventors shall be the exclusive owners of their works, inventions, or discoveries, for the length of time established by law. Confiscation of property is forever stricken out of the Argentine penal code. No armed body shall make requisitions or demand assistance of any kind.

ARTICLE 18. No inhabitant of the nation shall be punished except after trial and conviction under laws anterior to the commission of the offense; nor shall he be tried by special commissions, or removed from the jurisdiction of the courts which, under the laws in force at the time when the offense was committed, should take cognizance of his case. No one shall be compelled to testify against himself; nor shall anyone be arrested except by virtue of a written order of the proper authority. The defense of person and rights before the courts shall be inviolable. Domicile as well as epistolary correspondence and private papers shall be inviolable; but a law shall determine in what cases and under what circumstances the former may be entered and the latter seized. The penalty of death for political offenses, torture of all kinds, and whipping are abolished. The national jails shall be healthful and clean, intended for the safe keeping and not for the punishment of the offenders detained therein, and any measure which, under color of precaution, tends to inflict upon the prisoners more hardships than those required for their security shall cause the judge authorizing it to be held responsible.

ARTICLE 19. Private actions which in no way offend public order or morals, and are not injurious to a third party, shall be reserved to God alone, and are not subject to the authority of the state. No inhabitant of the nation shall be bound to do what is not ordered by law, nor shall he be forbidden to do what it does not prohibit.

ARTICLE 20. Aliens shall enjoy in the territory of the nation all the civil rights of citizens. They may exercise their trade, business, or profession; own, buy, and transfer real estate; navigate the rivers and coasts; practice freely their religion; make wills, and contract marriage in conformity with the law. They shall not be compelled to become citizens or to pay forced extraordinary taxes. They may obtain naturalization by residing two consecutive years in the nation, but the authorities may shorten this period in favor of the applicant who affirms and proves that he has rendered services to the republic.

ARTICLE 21. Every Argentine citizen shall be obliged to bear arms in defense of his country and of this constitution, in accordance with the laws enacted by Congress for that purpose, and in accordance with the decrees of the national executive. Naturalized citizens shall be free to render or to refuse military service during the ten years following the day on which they obtain their citizenship papers.

ARTICLE 22. The people shall not deliberate, or exercise the powers of government, except through their representatives and authorities created by this constitution. Any armed force or gathering of persons assuming to be vested with the representation of the rights of the people and petitioning in their behalf shall be guilty of sedition.

ARTICLE 23. In case of domestic disturbance, or foreign attack, endangering the observance of this constitution and the safety of the authorities created by it, a state of siege shall be proclaimed in the province or territory

wherein public order is disturbed and the constitutional guaranties shall be suspended within its limits. But during this suspension the president of the republic shall have no power by himself to condemn anyone or inflict punishments. His power shall be limited in such cases, so far as persons are concerned, to arrest or transfer them from one place in the country to another should they not prefer to leave the Argentine territory.

ARTICLE 24. Congress shall promote the reform of the laws which are now in force in all branches and the establishment of trial by jury.

ARTICLE 25. The federal government shall encourage European immigration, and shall not have power to restrict, limit, or obstruct, by taxation of any kind, the entrance into the Argentine territory of foreigners coming to it for the purpose of engaging in the cultivation of the soil, the improvement of industrial business, or the introduction and teaching of arts and sciences.

ARTICLE 26. Navigation on the rivers in the interior of the nation is free to all flags and subject to no other regulations than those proclaimed by the national authority.

ARTICLE 27. The federal government shall be bound to strengthen the commercial and peaceful relations of the Argentine nation with foreign countries by means of treaties consistent with the principles of public law established by this constitution.

ARTICLE 28. No principle, guarantee, or right recognized in the foregoing articles shall be altered by any law which may be enacted to regulate its exercise.

ARTICLE 29. Congress shall not have power to grant to the national executive or the provincial legislatures the power to grant to the provincial governors extraordinary powers, or the whole of the public authority, or to assent to submissions or supremacy through which the lives, the honor, or the property of Argentines may be placed at the mercy of governments, or of any person whatsoever. Acts of this character shall be utterly void, and shall render their authors, or those who consent to them or authorize them with their signatures, liable to be called to account and to be punished as infamous traitors to their country.

ARTICLE 30. The constitution may be amended either wholly or in part. The necessity for such amendment shall be declared by congress, by a vote of at least two-thirds of its members; but the amendment itself shall not be made except by a convention called for that purpose.

ARTICLE 31. This constitution, the national laws which may be enacted by congress in pursuance thereof, and the treaties with foreign powers shall be the supreme law of the nation; and the authorities of each province shall be bound to abide by them, any provision in their own provincial constitution or laws to the contrary notwithstanding. This rule shall not be applicable to the province of Buenos Aires, in so far as the treaties ratified after the compact of November 11, 1859, are concerned.

ARTICLE 32. The federal congress shall not pass any law restricting the liberty of the press, or subjecting it to federal jurisdiction.

ARTICLE 33. The declarations, rights, and guaranties enumerated in the constitution shall not be construed as involving the denial of any other rights and guaranties not enumerated, but naturally derived from the principles of the sovereignty of the people and of the republican form of government.

ARTICLE 34. The judges of the federal courts shall not at the same time be judges in the provincial courts. Neither shall a position in the federal service, whether civil or military, confer upon the official who holds it the

rights of residence in the province wherein it is held, and which may not be his habitual abode, this provision applying to their being chosen to positions in the province in which they may accidentally happen to be.

ARTICLE 35. The names of "The United Provinces of the Rio de La Plata" "The Argentine Republic," "The Argentine Confederation," adopted in succession since 1810, may in future be used indiscriminately as official designation of the government and the territory of the provinces; but the name of "The Argentine Nation" shall be used in the enactment and approval of the laws.

PART SECOND. AUTHORITIES OF THE NATION.

TITLE FIRST. — THE FEDERAL GOVERNMENT.

SECTION FIRST. — THE LEGISLATIVE POWER.

ARTICLE 36. The legislative power of the nation shall be vested in a congress composed of two houses, one called the house of deputies of the nation and the other the house of senators of the provinces and of the capital.

CHAPTER I. — *The House of Deputies.*

ARTICLE 37. The house of deputies shall consist of representatives elected directly and by simple plurality of votes, by the people of the provinces and of the capital, which shall be considered for this purpose as electoral districts of a unitary state. The number of representatives shall be one for every thirty-three thousand inhabitants of fractions thereof of not less than sixteen thousand five hundred. After the taking of each census congress, upon the basis of such census, shall fix the ratio of representation, which may increase but not diminish the number of inhabitants required for each deputy.[1]

ARTICLE 38. The deputies for the first congress shall be elected in the following proportion: For the province of Buenos Aires, twelve; for the province of Cordoba, six; for the province of Catamarca, three; for the province of Corrientes, four; for the province of Entre Ríos, two; for the province of Jujuy, two; for the province of Mendoza, three; for the province of La Rioja, two; for the province of Salta, three; for the province of Santiago, four; for the province of San Juan, two; for the province of Sante Fé, two; for the province of San Luis, two; for the province of Tucumán, three.

ARTICLE 39. A general census shall be taken before the meeting of the second congress, and the apportionment of deputies shall then be made in accordance therewith. The census, however, shall not be taken more than once in every ten years.

ARTICLE 40. No person shall be elected a deputy who has not attained the age of twenty-five, who has not been a citizen for four years, and who is not a native of the province electing him or a resident thereof for the two preceding years.

ARTICLE 41. The provincial legislatures shall regulate the manner of holding the first direct election of the deputies of the nation; Congress shall enact a general law for succeeding elections.

ARTICLE 42. The deputies shall serve for four years, and are eligible for re-election. The house, however, shall be renewed by halves every two years, and for this purpose the deputies elected to the first congress shall draw

[1] See article as amended March 15, 1898, p. 153.

lots as soon as they meet, in order to determine those whose term shall expire at the end of the first two years.

ARTICLE 43. In case of vacancy, the governor of the province or of the capital shall proceed to a legal election of a new member.

ARTICLE 44. The initiative of laws relating to taxes and to the recruiting of troops shall belong exclusively to the house of deputies.

ARTICLE 45. The house of deputies alone shall have the right to impeach before the senate the president, the vice-president, the ministers of the executive power, the justices of the supreme court, and the judges of other inferior tribunals of the nation for malfeasance or crime in the exercise of their functions, or for ordinary offenses. Impeachment of such person shall be made after investigation, and a resolution that a trial is in order passed by a vote of two-thirds of the deputies present.

CHAPTER II. — *The Senate.*

ARTICLE 46. The senate shall consist of two senators for each province elected by a plurality of votes of the respective provincial legislatures. There shall also be two senators for the capital, who shall be elected in the manner prescribed for the president of the nation. Each senator shall have one vote.

ARTICLE 47. The following qualifications shall be necessary for election as senator: the attainment of the age of thirty; citizenship in the nation for six years; the enjoyment of an annual income of two thousand pesos in coin, or an equivalent amount of capital; and nativity in the province which elects him or residence therein for the two years immediately preceding.

ARTICLE 48. Senators shall serve for nine years and are eligible for reelection indefinitely. But the senate shall be renewed by thirds every three years. For this purpose the senators themselves, as soon as they all convene, shall decide by lot those who shall retire at the expiration of the first and second periods of three years.

ARTICLE 49. The vice-president of the nation shall be president of the senate; but he shall have no vote except in the case of a tie.

ARTICLE 50. The senate shall elect a president pro tempore to preside in case of the absence of the vice-president, or when the latter acts as president of the nation.

ARTICLE 51. The senate shall have the power to try in public the persons impeached by the house of deputies, and senators, when sitting for that purpose, shall act under oath. When the impeached official is the president of the nation, the president of the supreme court shall preside over the senate. No person shall be convicted without the concurrence of two-thirds of the members present.

ARTICLE 52. The sentence of the Senate shall not extend further than removal of the one impeached from office and disqualification to hold any office of honor, trust, or profit under the nation; but the convicted person shall nevertheless be subject to indictment, trial, and punishment, according to law, by the ordinary courts.

ARTICLE 53. The senate may also authorize the president of the nation to declare a state of siege in one or more places in the republic, in case of foreign invasion.

ARTICLE 54. When the seat of a senator becomes vacant on account of death, resignation, or for any other cause, the government of the province represented by such senator shall proceed immediately to the election of a new member.

CHAPTER III. — *Provisions Common to Both Houses.*

ARTICLE 55. Both houses shall meet in regular session on the first day of May of each year and shall continue in session until the thirtieth of September. They may also be convened in extraordinary session or their sessions may be extended by the president of the nation.

ARTICLE 56. Each house shall be the judge of the elections, rights, and titles of its own members, in so far as the questions of their validity is concerned. Neither house shall transact business without the presence of a majority of all its members; but a smaller number shall have the power to compel the attendance of absent members by such means and under such penalties as each house may establish.

ARTICLE 57. Both houses shall open and close their sessions simultaneously. Neither shall have the power, during the session of congress, to adjourn, without the consent of the other, for more than three days.

ARTICLE 58. Each house may determine the rules of its proceedings, and by a two-thirds vote may punish any of its members for disorderly behavior in the discharge of his functions, remove him for physical or moral inability subsequent to his admission, or even expel him from the body. But a majority of one more than half of those present shall be sufficient to act upon the voluntary resignation of a member.

ARTICLE 59. Senators and deputies, on taking their seats, shall take an oath to perform their duties properly and to act in all things in accordance with this constitution.

ARTICLE 60. No member of congress shall be indicted, judicially questioned, or molested for opinions expressed or speeches delivered by him in the discharge of his duties as a legislator.

ARTICLE 61. Senators and deputies shall be, from the day of their election to the day of the expiration of their term, exempt from arrest, except when taken in the act of committing a crime that merits the death penalty or any other disgraceful or corporal punishment, in which case the matter shall be reported to the house to which the member belongs, with the record of the preliminary hearing.

ARTICLE 62. Should any charge be made in writing, before the ordinary tribunals, against a senator or deputy, the house to which he belongs may, by a two-thirds vote, and upon examination in public of the merits of the case, suspend the accused from the exercise of his functions and surrender him to the proper court for trial.

ARTICLE 63. Each house shall have power to summon to its presence the ministers of the executive power in order that they may give orally the explanations and information which may be deemed necessary.

ARTICLE 64. No member of Congress shall receive from the executive any appointment or commission without first obtaining the consent of the house to which he belongs; this article shall not be applicable to cases in which the appointment is merely a promotion.

ARTICLE 65. No member of the religious orders shall be elected to congress. Nor shall any provincial governor represent his province during his term of office.

ARTICLE 66. The remuneration of the services of senators and deputies shall be fixed by law and paid out of the funds of the national treasury.

CHAPTER IV. — *Powers of Congress.*

ARTICLE 67. Congress shall have power:

1. To legislate in regard to custom-houses, and to establish import duties, which, as well as the rates of appraisement on which they are based, shall be uniform throughout the nation; it being thoroughly understood, however, that these duties and all other taxes of national character are payable in the currency of the respective provinces in their exact equivalent value. And to establish likewise export duties *up to 1866, at which time they shall cease to be either national or provincial taxes.*[1]

2. To levy direct taxes for a period of time and in a manner proportionately equal throughout the territory of the nation, whenever the defense of the country, the common safety, or the public good may require it.

3. To borrow money on the credit of the nation.

4. To provide for the use and disposition of the national lands.

5. To establish and organize at the capital a national bank, with branches in the provinces, with power to issue bank notes.

6. To make arrangements for the payment of the national debt, both foreign and domestic.

7. To appropriate annually the money necessary to meet the expenditures of the national government, and to approve or disapprove the accounts of its disbursement.

8. To grant subsidies, to be paid out of the national treasury, to those provinces whose revenues, according to their budgets, are insufficient to meet their ordinary expenses.

9. To regulate the free navigation of the rivers in the interior, to declare as ports of entry those which may be deemed fit for that purpose, and to establish or abolish custom-houses. But the custom-houses for foreign commerce, existing in each province at the time of its coming into the national union, shall not be abolished.

10. To coin money, fix the value thereof and that of foreign coins, and adopt a uniform system of weights and measures for the whole nation.

11. To enact civil, commercial, penal, and mining codes without encroaching upon the local jurisdictions, the provisions of said codes to be enforced either by the federal or provincial courts, according as the matters or persons may fall under their respective jurisdiction; and especially to enact general laws on naturalization and citizenship for the whole nation based upon the principle of citizenship by nativity, as well as laws on bankruptcy, counterfeiting of money and forging of public documents of the state, and on the establishment of trial by jury.

12. To regulate commerce by land and sea with foreign countries, and among the provinces.

13. To establish and regulate the post-offices and post-roads of the nation.

14. To settle finally the national boundaries, to fix those of the provinces, to create new provinces, and to provide by special laws for the organization, administration, and government of the national territories which may be left outside the limits assigned to the provinces.

15. To provide for the security of the frontiers and for the preservation of peaceful intercourse with the Indians, and to promote their conversion to Catholicism.

16. To provide for all that conduces to the prosperity of the country, to the advancement and welfare of all the provinces, and to the advancement of

[1] Words in *italics* stricken out September 12, 1866. See amendment to art. 67, clause 1, p. 156.

the enlightenment of the people, by prescribing plans for general and university instruction and by promoting industrial enterprise, immigration, the construction of railways and navigable canals, the colonization of the public lands, the introduction and establishment of new industries, the importation of foreign capital, and the exploration of the interior rivers, by protective laws for these purposes, by concessions of privileges for a limited time, and by rewards which shall act as an encouragement.

17. To establish courts inferior to the supreme court of justice; to create and abolish offices and to fix the duties of the same; grant pensions, decree honors, and to grant general amnesties.

18. To accept or refuse to accept the reasons assigned for the resignation of the president or vice-president of the republic; to declare that the time has arrived to proceed to a new election, to count the returns thereof, and to ascertain the result.

19. To approve or reject treaties concluded with other nations, and the concordats entered into with the Apostolic See, and to make rules for the exercise of ecclesiastical patronage throughout the nation.

20. To admit into the territory of the nation religious orders in addition to those now existing.

21. To authorize the executive power to declare war or to make peace.

22. To grant letters of marque and of reprisal and to make rules concerning prizes.

23. To fix the strength of the land and naval forces in times of peace and of war, and to make rules and ordinances for the government of such forces.

24. To authorize the calling out of the militia of the provinces, whenever the execution of the laws of the nation, the suppression of insurrections, or the repelling of invasions, may render it necessary. To provide for the organization, equipment, and discipline of such militia, and for the administration and government of the part thereof which may be employed in the service of the nation, leaving to the provinces the power to appoint the proper chiefs and officers of their respective militias, and to enforce in regard to them the discipline established by congress.

25. To permit the introduction of foreign troops into the territory of the nation, and the departure therefrom of the national troops.

26. To proclaim a state of siege in one or more places in the nation in case of internal disorder, and to approve or suspend the state of siege declared during the recess of congress by the executive power.

27. To exercise exclusive legislative power throughout the territory of the national capital and in all other places acquired by purchase or cession in any province for the construction of forts, arsenals, magazines, or other useful establishments of national utility.

28. To make all laws and regulations which shall be necessary for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the Argentine nation.

Chapter V. — *Enactment and Approval of Laws.*

Article 68. Laws may originate in either house of congress by means of bills introduced by the members thereof or by the executive; except, however, those relating to the subjects mentioned in article 44.

Article 69. When a bill has been passed in the house where it originated, it shall be sent to the other house for discussion. Having been passed by both houses, it shall be sent to the executive of the nation for examination, who, if he approve it, shall promulgate it as law.

ARTICLE 70. Bills not returned by the executive within ten working days shall be considered approved.

ARTICLE 71. No bill wholly rejected in one house shall be introduced again during the sessions of the same year. But if it be merely added to or amended by the house to which it was sent for examination, it shall be returned to the house in which it originated; and if the additions or amendments be adopted there by an absolute majority, it shall be sent to the executive of the nation. If the additions or amendments be rejected, the bill shall be again referred to the house where they were made, and if they be again approved there by a majority of two-thirds of the members thereof, the bill shall be again referred to the other house, where such additions or amendments shall not be deemed rejected unless the rejection is made by a majority of two-thirds of the members present.

ARTICLE 72. A bill rejected, either wholly or in part, by the executive shall be returned with his objections to the house in which it originated, where it shall be discussed a second time, and if passed by a two-thirds majority shall be again referred to the other house for examination. If the bill pass both houses by the aforesaid majority it shall become a law and shall go to the executive for promulgation. The votes in both houses in this case shall be by yeas and nays, and the names of the members who took part in the vote, as well as the grounds upon which they founded their votes, and the objections of the executive, shall be immediately published by the press. If the houses disagree in regard to the objections, the bill shall not be reconsidered in any session of the same year.

ARTICLE 73. The enacting clause of all laws shall be as follows: "The senate and the house of deputies of the Argentine Nation, in congress assembled, etc., decree or sanction as law:"

SECTION SECOND.—THE EXECUTIVE POWER.

CHAPTER I. — *Its Nature and Duration.*

ARTICLE 74. The executive power of the nation shall be vested in a citizen with the title of "President of the Argentine Nation."

ARTICLE 75. In case of illness, absence from the capital, death, resignation, or removal of the president, the executive power shall be exercised by the vice-president of the nation. In case of removal, death, resignation, or incapacity of both the president and vice-president of the nation, congress shall determine what public officer shall act as president until the disability is removed or a new president is elected.[1]

ARTICLE 76. To be elected president or vice-president of the nation one

[1] Law of September 19, 1868:

The Senate and the Chamber of Deputies, etc.

ARTICLE 1. In case of vacancy of both the presidency and vice-presidency of the nation, the executive power shall be vested first in the president pro tempore of the senate, second in the speaker of the chamber of deputies, and third, in the chief justice of the supreme court.

ARTICLE 2. For the purposes of this law each chamber shall appoint its presiding officer thirty days before the closing of the ordinary session.

ARTICLE 3. The official called upon to discharge the duties of the executive, according to article 1 of this law, shall, if the absence or disability of the president and vice-president be permanent, order a new election of president and vice-president to be held within thirty days after his installation in office.

ARTICLE 4. The functionary who shall exercise the executive power in the cases of article 1 of this law shall, on entering upon the discharge of his duties, take before congress, and in its absence before the supreme court of justice, the oath prescribed by article 80 of the constitution.

must have been born in the Argentine territory, or if born in a foreign country be the son of a native citizen; must belong to the Roman Catholic Apostolic church; and must have all the other qualifications required to be a senator.

ARTICLE 77. The president and the vice-president shall hold their offices for a term of six years, but neither shall be reëlected until after an intermission of one term.

ARTICLE 78. The president of the nation shall cease to exercise his powers on the same day on which his term of six years expires; and no event of any kind which may have interrupted such term may be alleged as a reason for completing it afterward.

ARTICLE 79. The president and vice-president shall receive for their services a compensation, to be paid from the national treasury, the amount of which shall not be changed during their terms of office. During said period they shall not exercise any other office or receive any other emolument, either national or provincial.

ARTICLE 80. On entering upon the discharge of their duties, the president and the vice-president shall take an oath, which shall be administered to them by the president of the senate (the first time by the president of the Constitutional Convention), congress being in session, in the following terms:

"I, ——— ———, do swear before God our Lord and these Holy Gospels to discharge loyally and patriotically the office of president (or vice-president) of the nation, and faithfully to observe and to cause others to observe, the constitution of the Argentine Nation. Should I fail to do so, may God and the nation require it of me."

CHAPTER II. — *Manner and Time of Electing the President and Vice-president of the Nation.*

ARTICLE 81. The election of the president and vice-president of the nation shall be made in the following manner: The capital and each one of the provinces shall appoint, by direct vote, an electoral college, consisting of twice as many members as the number of senators and deputies constituting their respective representation in congress, who shall have the same qualifications, and shall be elected in the same manner, as is provided for the election of deputies.

Deputies, senators, and officials receiving pay from the federal government, shall be disqualified from acting as electors.

Four months before the expiration of the presidential term, the electors chosen by the capital shall meet in the capital, and those chosen by the provinces in their respective capitals, and shall proceed to elect by signed ballots the president and vice-president of the nation, expressing in one ballot the choice for president and in another distinct ballot the choice for vice-president.

Two lists shall be made of all the persons named for president and two others of those named for vice-president, with the number of votes cast in favor of each of them. These lists shall be signed by the electors and sent by them sealed, two (one of each kind) to the president of the provincial legislature, and in the case of the capital to the president of the municipality, to be filed and kept, with their seals unbroken, in their respective archives, and the other two to the president of the senate (for the first election to the president of the constitutional convention).

ARTICLE 82. The president of the senate (for the first election the president of the constitutional convention), having all the lists in his possession, shall open them in the presence of the two houses. Four members of congress,

selected by lot, shall, together with the secretaries, immediately proceed to count and announce the votes cast for each candidate for president or for vice-president of the nation. Those receiving in each case an absolute majority of all the votes shall be immediately proclaimed president or vice-president.

ARTICLE 83. In case the vote is divided and no absolute majority can be obtained, congress shall elect one of the two persons who shall have obtained the greatest number of votes. If the highest vote obtained prove to be in favor of more than two persons, congress shall make its choice from among all of them.

If the highest vote obtained proves to be in favor of only one person and two or more persons are favored with the next largest vote, the choice of congress shall be made from among all those who obtained the first and second highest votes.

ARTICLE 84. This choice shall be made by an absolute majority of votes, the votes to be verbal. If such majority is not obtained on the first ballot, a second vote shall be taken, restricting the vote to the two persons who shall have obtained the greatest number of votes on the first ballot. If the vote is equally divided, the balloting shall be repeated, but if it again results in an equal division, the president of the senate (for the first election the president of the constitutional convention) shall decide by his vote. The counting of the votes and the verifying of these elections shall not be made without the presence of three-fourths of all the members of congress.

ARTICLE 85. The election of the president and vice-president of the nation shall be concluded in a single sitting of congress, and the result thereof, as well as the journal of the electoral proceedings, shall be published immediately through the newspapers.

CHAPTER III. — *Powers of the Executive.*

ARTICLE 86. The president of the nation shall have the following powers:

1. He shall be the chief magistrate of the nation, and shall have in his charge the general administration of the country.

2. He may issue the instructions and regulations necessary for the execution of the laws of the nation, taking care that the spirit of such laws be not changed by exceptions introduced through the said regulations.

3. He shall be the chief local authority of the capital of the nation.

4. He shall assist, in the manner provided by the constitution, in making the laws, shall approve them, and shall cause them to be promulgated.

5. He shall appoint, with the advice of the senate, the justices of the supreme court and of all other inferior federal courts.

6. He may grant pardons or commute punishments in cases of offenses subject to federal jurisdiction, upon report of the proper court, except in cases of impeachment by the house of deputies.

7. He may place officials on the retired list with pay, and grant leaves of absence, and the enjoyment of pensions to widows and orphans, in accordance with the laws of the nation.

8. He shall exercise the right of national ecclesiastical patronage by presenting bishops for the cathedral churches, selected from three names proposed to him by the senate.

9. He shall, with the advice of the supreme court, grant or refuse passage to decrees of the councils, bulls, briefs, and rescripts of the Supreme Pontiff of Rome; but said grant or refusal shall be made by law whenever such ecclesiastical enactments contain provisions of a general or permanent character.

10. He shall appoint and remove, with the advice of the senate, the ministers plenipotentiary and chargés d'affaires, and by himself alone, without senatorial action, ministers of state, officials of the departments, consular agents, and all the government employees whose appointment is not otherwise provided for by this constitution.

11. He shall open the annual sessions of congress, both houses assembling for that purpose in the hall of the senate; on this occasion he shall furnish information as to the condition of the nation, of the reforms promised by the constitution, and shall recommend to the consideration of the houses such measures as he may deem necessary and expedient.

12. He may extend the regular session of congress or convene it in extraordinary session, when some grave interest of order or progress may require it.

13. He shall cause the revenue of the nation to be collected, and shall decree the disbursement thereof in accordance with the law or budgets of national expenses.

14. He shall conclude and sign treaties of peace, of commerce, of navigation, of alliance, of boundaries, and of neutrality, as well as concordats and all other negotiations required for the maintenance of friendly relations with foreign powers. He shall receive their ministers and admit their consuls.

15. He shall be the commander in chief of all the land and naval forces of the nation.

16. He shall appoint all the military officers of the nation; with the consent of the senate when the position to be filled, or the rank to be given, is that of a superior officer in either the army or the navy, and by himself when the appointments are made on the battlefield.

17. He shall dispose of the land and naval forces of the nation and shall attend to their organization and distribution, according to the necessities of the nation.

18. With the authority and approval of congress, he may declare war and grant letters of marque and of reprisal.

19. With the consent of the senate, in case of foreign invasion, he may declare one or more places in the nation to be in a state of siege for a limited time. In case of internal troubles he may exercise such power only during the recess of congress, for such power belongs to that body. The president shall exercise this power within the limitations established by article 23.

20. He may require whatever information he may desire from the chiefs of all bureaus and departments of the government and through them from other officials, and they shall be obliged to furnish it.

21. The president shall not leave the national capital without the permission of congress. During the recess of the latter he may, however, absent himself from the capital without such permission, if some grave necessity of the public service shall demand it.

22. The president shall have the power to fill those vacancies which require the consent of the senate, and which occur during a recess, by means of appointments which shall expire at the close of the next session.

Chapter IV. — *The Ministers of the Executive Power.*

Article 87.[1] Eight ministers or secretaries shall have charge of the affairs of the nation, and shall countersign and attest the acts of the president by means of their signatures; these acts shall not be valid without such countersignature. A special law shall determine the business of each department.

[1] See article as amended March 15, 1898, p. 153.

ARTICLE 88. Each minister is individually responsible for the acts signed by himself, and jointly with the other ministers for all acts agreed upon between him and his colleagues.

ARTICLE 89. The ministers shall not, in any case, take individual action on any subject, unless it concerns only the internal government of their own respective departments.

ARTICLE 90. As soon as congress opens its sessions, each minister shall submit to it a detailed report on the state of the nation, in all that relates to the business of his own department.

ARTICLE 91. No minister shall become either senator or deputy without first resigning his position as minister.

ARTICLE 92. Ministers may attend the sessions of congress and take part in the debates, but shall have no vote.

ARTICLE 93. Ministers shall receive for their services a salary established by law; but this salary shall not be increased or diminished in favor of or against the incumbent of the position.

SECTION THIRD. — THE JUDICIAL POWER.

CHAPTER I. — *Its Nature and Duration.*

ARTICLE 94. The judicial power of the nation shall be vested in a supreme court of justice and in such other inferior courts as congress may establish in the national territory.

ARTICLE 95. The president of the republic shall in no case exercise judicial functions, assume jurisdiction of any pending case, or reopen cases already decided.

ARTICLE 96. The judges of the supreme court and of the inferior courts of the nation shall hold their offices during good behavior, and shall receive for their services a compensation to be fixed by law, which shall not be diminished in any manner while they remain in the exercise of their functions.

ARTICLE 97. No person shall be a member of the supreme court of justice who is not a lawyer, with eight years' practice in the national courts, and has not, furthermore, the qualifications necessary to be a senator.

ARTICLE 98. On the first assembling of the supreme court, the members thereof shall take an oath, which shall be administered to them by the president of the nation, to fulfill their duties by administering justice well and legally and in accordance with the provisions of the constitution. In the future the oath shall be administered to them by the president of said court.

ARTICLE 99. The supreme court shall make rules for the transaction of its business, and shall appoint all its subordinate employees.

CHAPTER II. — *Functions of the Judicial Power.*

ARTICLE 100. The supreme court and the inferior courts of the nation shall try and decide all cases, not enumerated in clause 11 of article 67, which arise under the provisions of this constitution, the laws of the nation, or treaties with foreign powers; in cases concerning ambassadors, public ministers, and foreign consuls; in cases of admiralty and maritime jurisdiction; in controversies to which the nation is a party; in cases which arise between two or more provinces, between one province and citizens of another province, between citizens of different provinces, and between a province or its citizens and a foreign state or its citizens.

ARTICLE 101. In the above mentioned cases the supreme court shall have appellate jurisdiction, under such rules and exceptions thereto as congress may establish. But in all cases concerning foreign ambassadors, ministers, and consuls, and in those to which a province may be a party, the jurisdiction of the court shall be original and exclusive.

ARTICLE 102. The trial of all ordinary crimes, except in cases of impeachment, which belong to the house of deputies, shall be by jury, as soon as this institution shall be established in the republic. Such trials shall take place in the province where the offense shall have been committed; but when the offense shall have been committed outside the boundaries of the nation, and in violation of the law of nations, congress shall determine, by a special law, the place in which the trial shall take place.

ARTICLE 103. Treason against the nation shall consist only in taking up arms against it or in joining its enemies and lending them aid and succor. Congress shall by a special law determine the penalty for this crime, but the punishment shall not go beyond the person of the offender, nor shall any infamy resulting therefrom attaint his relatives, whatever the degree of relationship.

TITLE SECOND. — PROVINCIAL GOVERNMENTS.

ARTICLE 104. The provinces retain all powers not delegated by the present constitution to the federal government and those which they may have expressly reserved by special agreements at the time of their coming into the union.

ARTICLE 105. The provinces shall have their own local institutions and shall be governed by them. They shall elect their governors, legislators, and other provincial officers without intervention of the federal government.

ARTICLE 106. Each province shall enact its own constitution, in accordance with the provisions of article 5.

ARTICLE 107. With the knowledge of the federal congress, the provinces may enter into partial treaties for the purposes of the administration of justice, the regulation of financial interests, and the execution of public works of common utility; they may promote, by means of protective laws and at their own expense, industry, immigration, the construction of railways and navigable canals, the colonization of provincial lands, the introduction and establishment of new industries, the importation of foreign capital, and the exploration of their rivers.

ARTICLE 108. The provinces shall not exercise any power delegated to the nation. They shall not enter into any partial treaties of a political character, pass laws relating to domestic or foreign commerce or navigation; establish provincial custom-houses; coin money; or create banks of issue, without authority from the federal congress; nor shall they enact any civil, commercial, criminal, or mining codes after congress has enacted such codes, or especially pass laws on the subjects of citizenship, naturalization, bankruptcy, and counterfeiting of money or forging of government documents; nor shall they establish tonnage dues, arm war vessels, or raise armies, except in case of foreign invasion or of such danger so imminent as to admit of no delay, immediately giving account thereof to the federal government; nor shall they appoint or receive foreign agents, or admit new religious orders.

ARTICLE 109. No province shall declare or wage war against another. Their complaints shall be submitted to and settled by the supreme court of justice. Actual hostilities on the part of one province against another shall

be deemed acts of civil war, seditious and riotous, which the federal government shall put down and repress according to law.

ARTICLE 110. The governors of the provinces shall be the natural agents of the federal government for the enforcement of the constitution and of the laws of the nation.

Hall of Sessions of the National Convention at the City of Santa Fé on the 25th day of September, 1860.

AMENDMENTS TO CONSTITUTION.

AMENDMENTS ADOPTED SEPTEMBER 12, 1866.

The national convention enacts the following:

First. That part of article 4 of the national constitution which reads: "Until 1866, in conformity with the enactments of article 67, clause 1," shall be stricken out, the said article to read as follows:

"The federal government shall defray the expenses of the nation with funds of the national treasury, consisting of receipts from import and export duties; proceeds of the sale or lease of national lands; revenue of the postal service; taxes levied by the general congress equitably and in proportion to the population, and moneys obtained through loans and financial operations decreed by congress for urgent national necessities or for works of national utility."

Second. The last part of clause 1, article 67, which reads: "Up to 1866, at which time they shall cease to be either national or provincial taxes," shall be stricken out, so as to make said clause read as follows:

"(1) To legislate in regard to custom-houses and foreign commerce and establish import duties which, as well as the rates of appraisement on which they must be based, shall be uniform in the whole nation, it being understood, however, that these duties and all other taxes of national character may be paid in the currency of the respective provinces at their just equivalent value. And to establish likewise export duties."

AMENDMENTS ADOPTED SEPTEMBER 19, 1868.

The Senate and the Chamber of Deputies, etc.

ARTICLE 1. In case of vacancy of both the presidency and vice-presidency of the nation, the executive power shall be vested first in the president pro tempore of the senate, second in the speaker of the chamber of deputies, and third in the chief justice of the supreme court.

ARTICLE 2. For the purposes of this law each chamber shall appoint its presiding officer thirty days before the closing of the ordinary session.

ARTICLE 3. The official called upon to discharge the duties of the executive, according to article 1 of this law, shall, if the absence or disability of the president and vice-president be permanent, order a new election of president and vice-president to be held within thirty days after his installation in office.

ARTICLE 4. The functionary who shall exercise the executive power in the cases of article 1 of this law shall, on entering upon the discharge of his duties, take before congress, and in its absence before the supreme court of justice, the oath prescribed by article 80 of the constitution.

AMENDMENTS ADOPTED MARCH 15, 1898.

The national convention assembled in the capital of the republic, in pursuance of law No. 3507 of September 3, 1867, sanctions:

First. Articles 37 and 87 of the national constitution are hereby amended as follows:

"ARTICLE 37. The chamber of deputies shall consist of deputies elected directly and by plurality of votes, by the people of the provinces and of the capital, which shall be considered for this purpose as mere electoral districts of a single state. The election shall be in the proportion of one deputy for each thirty-three thousand inhabitants or fraction thereof of not less than sixteen thousand five hundred. After the taking of each census congress shall fix, according to its results, the rate of representation, which in no case shall be less than that now established.

"ARTICLE 87. Eight secretaries of state shall have charge of the affairs of the nation, and shall countersign and attest all acts of the president, which without this requisite shall lack validity. A special law shall determine the business of each department."

APPENDIX C.

SUMMARY OF ARGENTINE ELECTORAL LAW.

(1) Governed by Law No. 8871 of February 13, 1912.

All citizens, native or naturalized, of 18 years of age or over, are national electors.

Exclusions: By reason of incapacity, peculiar status or unworthiness.

Suffrage is individual and obligatory. Only those persons are exempt who are over 70 years of age, and the judges and assistants who must act as such, during the hours of the election.

Election of Deputies.

Must take place throughout the country in the month of March of all years of even number; extraordinary elections for vacancies must take place during the ordinary periods, on the holiday designated by the Assembly. The deputies remain four years in office and may be reëlected. They are renewed by one-half every two years.

Election of Senators by the Provinces.

For the ordinary renovation of the Senate the Legislative Chambers meet and name Senators by plurality of votes, before the first of March of the year of renovation. They remain nine years in office and may be re-elected. The Senate is renewed by thirds every three years.

In case of extraordinary vacancy notice to be given to the corresponding Government which must immediately instruct the Legislature to celebrate within 15 days the reëlection of a new Senator.

Senators for the Capital.

(2) The two senators for the Federal Capital are elected by a committee of citizens elected in turn by popular vote.

Electoral Precincts.

In the capital of the Republic as well as in the capitals and cities of the Provinces, each police section constitutes an electoral precinct. In each of these precincts are assigned, by numbers, as many tables for receiving votes as there are series composed of 200 registered citizens each, living within the precinct.

If there is a fraction of less than 200 but over 100 it constitutes a table. If the fraction is less than 100 or disperse, it is incorporated in the nearest serie or series.

A rural population of over 250 registered citizens constitutes an electoral precinct. For fractions composed of less than 100 the same proceeding is observed as that adopted in the capitals and cities.

Every group of more than 150 registered citizens, dispersed in small villages or isolated dwellings in the country, constitutes also an electoral precinct, in a single table.

If the group consists of less than 150 it is incorporated in the nearest precinct in its department or district.

In the elections of national deputies, electors of Senators for the Capital and electors of President and Vice-President, each elector may only vote for the two-thirds part of the number to elect, and in case of a fraction of that number, for one candidate more. When the election is for one or two national deputies, each elector may give his vote to an equal number of candidates.

Examples:

When 1 is elected 1 is voted for.
When 2 are elected 2 are voted for.
When 11 are elected as many as 8 may be voted for.
When 12 are elected as many as 8 may be voted for.

That is to say, the majority is shown in the even two-thirds part, and is maintained in the fraction not divisible by three.

Those persons are proclaimed deputies and electors of Senators and President and Vice-President who receive the greater number of votes, until the number of candidates to be elected is completed, in accordance with the Assembly, whatever list or lists they may figure in.

If in completing the representation various candidates receive an equal number of votes, the question is resolved by the Inspection Committee by drawing lots.

When in the elections of renovation votes are also cast for extraordinary vacancies, the drawing of lots determines which deputies shall fill such vacancies, provided the question is not clearly established by the election. The drawing is verified by the Chamber of Deputies.

The object of election by incomplete list is to give representation to the minority. The system was adopted in order to avoid the triumph of a single list, that of the majority which was the result of voting by a complete list, and also to avoid unfairness in the list by sections (circunscripcion).

At the present time, it will be observed, the system in use only gives representation to one minority. The suggestion has been made of presenting a modification which would agree to representation by quotient.

The census of the republic as taken in the year 1914 was approved for 1919, that is to say, 8,090,084 inhabitants, 7,886,294 inhabitants being fixed as the nominal registered population, it then being necessary to elect 158 deputies, or one for every 49,000 inhabitants or fraction not inferior to 16,500. It was also resolved not to divide the representation which at that time corresponded to the electoral districts and the representation was increased by two deputies, it being established that after the biennial renovation of 1920, there would be 160 deputies. The representation maintained corresponded to the Provinces of Salta and Catamarca. The last election was effected in accordance with these resolutions.

APPENDIX D.

STATISTICS OF ILLITERACY.

CENSUS: The National Census of 1914, the last taken (Tercer Censo Nacional, Tomo III, p. 321 *et seq.*), shows that in all the republic of a total of 6,301,961 persons of seven years and over there were 2,213,916 wholly illiterate (*i.e.*, could not read norwrite), 172,096 partially illiterate (*i.e.*, could read but not write), and 3,915,949 literate (*i.e.*, could read and write). The figures include both Argentines and foreigners.

For Argentines the figures are: wholly illiterate, 1,471,225; partially illiterate, 112,682; literate, 2,420,406. Percentage of (total) illiteracy 36.74 per cent.

For foreigners: wholly illiterate, 742,691; partially illiterate, 59,414; literate, 1,495,544. Percentage of illiteracy, 32.32 per cent.

In 12 of the 26 territorial divisions (16 provinces and 10 territories) the number of wholly illiterate exceeded the number who could read and write, viz., Provinces of Corrientes, Santiago del Estero, Tucumán, La Rioja, Catamarca, Salta, Jujuy, and the Territories of Chaco, Formosa, Los Andes, Neuquen, and Rio Negro.

ELECTORAL: The registration of voters for 1916, to which reference is made in the text, for the 16 electoral districts, shows the following numbers and percentages of illiteracy (Tercer Censo Nacional, Tomo IV, p. 479 *et seq.*):

Electoral district.	Total registered.	Literate.	Per cent.	Illiterate.	Per cent.
Federal Capital.....	165,222	158,642	96.02	6,580	3.98
PROVINCES.					
Buenos Aires (North)	188,118	136,992	72.82	51,126	27.17
" " (South).	104,766	67,247	64.19	37,519	35.81
Santa Fe.....	124,152	85,788	69.10	38,364	30.90
Entre Rios.....	80,018	44,640	55.80	35,378	44.20
Corrientes.....	69,771	33,674	48.26	36,097	51.74
Córdoba.....	139,059	77,409	55.67	61,650	44.33
San Luis.....	25,869	16,070	62.12	9,799	37.88
Santiago del Estero ..	56,532	21,668	38.33	34,864	61.67
Catamarca.....	22,403	12,513	55.85	9,890	44.15
Tucumán.....	77,249	36,011	44.62	41,238	53.58
La Rioja.....	18,070	9,278	51.54	8,792	48.46
Mendoza.....	44,039	25,336	57.53	18,703	42.47
San Juan.....	23,247	12,645	54.39	10,602	45.61
Salta.....	30,729	16,167	52.61	14,562	47.39
Jujuy.....	14,520	7,624	52.50	6,896	47.50
Whole.....	1,183,764	761,704	64.35	422,060	35.65

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